



**MINUTES OF THE SPECIAL MEETING
OF THE
GOVERNANCE COMMITTEE**

December 1, 2020

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Minutes of the regular meeting of the New York Power Authority and Canal Corporation's Governance Committee held via videoconference at approximately 9:00 a.m.

The following Members of the Governance Committee were present:

Dennis Trainor, Chair
John Koelmel
Eugene L. Nicandri
Tracy McKibben
Michael Balboni
Anthony Picente, Jr.

Also in attendance were:

Gil Quiniones	President and Chief Executive Officer
Justin Driscoll	Executive Vice President and General Counsel
Joseph Kessler	Executive Vice President and Chief Operating Officer
Kristine Pizzo	Executive Vice President and Chief Human Resources and Administrative Officer
Adam Barsky	Executive Vice President and Chief Financial Officer
Sarah Salati	Executive Vice President and Chief Commercial Officer
Yves Noel	Senior Vice President – Strategy & Corporate Development
Soubhagya Parija	Senior Vice President and Chief Risk Officer
Angela Gonzalez	Senior Vice President – Internal Audit
Robert Piascik	Senior Vice President and Chief Information Officer
Karen Delince	Vice President and Corporate Secretary
Joseph Gryzlo	Vice President and Chief Ethics & Compliance Officer
Daniella Piper	Vice President – Digital Transformation Office and Chief of Staff
John Canale	Vice President – Strategic Supply Management
Ruth Colon	Vice President – Enterprise Shared Services
Saul Rojas	Vice President – Enterprise Resilience
Christina Reynolds	Treasurer
Nancy Harvey	Chief Diversity, Equity & Inclusion Officer
Susan Craig	Director – Media Relations
Kaela Mainsah	Senior Manager – Environmental Justice
Victoria Daniels	Manager – Supplier Diversity
Lorna Johnson	Senior Associate Corporate Secretary
Sheila Quatrocci	Associate Corporate Secretary

Chair Dennis Trainor presided over the meeting. Corporate Secretary Delince kept the Minutes.

Introduction

Chair Dennis Trainor welcomed committee members and Authority senior staff to the meeting. He said that the meeting had been duly noticed as required by the Open Meetings Law and called the meeting to order pursuant to Section B(4) of the Governance Committee Charter.

1. **Adoption of the Proposed Meeting Agenda**

On motion made by Member John Koelmel and seconded by Member Tracy McKibben, the Agenda was adopted.

2. **Motion to Conduct an Executive Session**

“Mr. Chairman, I move that the Governance Committee conduct an executive session to discuss the employment history of a particular person, pursuant to section 105 of the Public Officers Law.” On motion made by member Michael Balboni and seconded by member Tracy McKibben, the members held an executive session.

3. **Motion to Resume Meeting in Open Session**

“Mr. Chairman, I move to resume the meeting in Open Session.” On motion made by member Eugene Nicandri and seconded by member John Koelmel, the meeting resumed in Open Session.

Chairman Trainor said that no votes were taken during the Executive Session.

4. DISCUSSION AGENDA:

Ten-Point Racial Justice and Equity Plan

"President Quiniones introduced the Authority's Ten-Point Racial Justice and Equity Plan to the Committee. He said that the death of George Floyd on May 25th was not only a tragedy, but also a wake-up call for all of us as individuals, our nation, companies, and communities to reflect, once again, on the persistent issue of racial justice, diversity, equity, and inclusion. NYPA and Canals have been doing their part in this very large, complex equation and aspire to lead by example.

To that end, NYPA formed a team to work on this issue with several Town Hall meetings with the Employee Resource Group and the employees, in general. The team developed a Plan that included NYPA's partnership with the American Association of Blacks in Energy, that was submitted to the Board in July. A follow-up to that Plan was presented to the members at the September Board meeting. At this meeting, Kristine Pizzo, Nancy Harvey, Victoria Daniels, and Kaela Mainsah will outline two key areas of the Authority's goals, plans and desired outcomes.

The first key area is the investments that NYPA and Canals are going to make in the spirit of continuous improvement in diversity, equity, and inclusion. The second area will be investments in our communities and the society at large, which will be divided into two subareas. The first area will focus on how NYPA will channel at least \$500 million in customer energy solutions to benefit disadvantaged and environmental justice communities. NYPA plans to create jobs and opportunities to the members of those communities. The second area is an endeavor to double NYPA's procurement of goods and services from M/WBE firms, from an average of \$80 million per year to \$160 million per year in five years; this will exceed the State's M/WBE goals.

President Quiniones then asked Ms. Kristine Pizzo, Executive Vice President and Chief Human Resources & Administrative Officer, and the team to present the Plan to the members (Exhibit 4a-A).

NYPA's Commitment to Diversity, Equity, and Inclusion

Ms. Pizzo said that in July, staff had presented the members with a Ten-Point Plan commitment toward advancing diversity, equity, inclusion, both internally and externally. At that meeting, the leaders of the Office of Civil Rights and Inclusion, Supplier Diversity and Environmental Justice, presented the plans to create a more diverse workforce, advance opportunities for minority and woman-owned businesses in the supply chain and create opportunities for underserved communities. She also said that the members challenged staff to prepare a Plan that more fully represent the depth and breadth of this commitment and staff prepared a framework to realize that goal for the members' approval. She said staff will now present a Plan that builds upon the ten commitments and demonstrates how important this initiative is, not just through words, but through actions.

Ms. Pizzo continued that, over the next five years, the Plan will invest \$685 million in new and existing resources and programs to achieve this commitment. The goal is to target and channel investments of at least \$500 million in Customer Energy Solutions projects in disadvantaged communities; channel the supply chain to strengthen women and minority-owned businesses, doubling the existing annual investment to \$160 million; and investing \$25 million to implement Diversity, Equity and Inclusion ('DEI') programs including expanding NYPA's commitment to train, develop and retain staff, and foster a culture where all employees are valued and treated fairly. She then invited Ms. Nancy Harvey, Chief Diversity, Equity and Inclusion Officer and the other DEI leaders to outline NYPA's commitments, investments, and outcomes.

OFFICE OF CIVIL RIGHTS & INCLUSION

“Ms. Nancy Harvey presented NYPA’s diversity, equity, and inclusion plan to the Committee. She said that, as the largest state-owned public power organization in the nation, NYPA has always set an example in the energy industry with its commitment to producing clean, renewable energy and creating jobs across New York State. NYPA continues a strong tradition of innovative effort in 2020.

This year was marked by an unmistakable call to action for change. We are in the third wave of a pandemic and have witnessed breathtaking incidents of racial injustice. Also evident is the disproportionate impact on minority communities. Since June, the Authority has been challenged to double its efforts to build a talented and diverse workforce and a culture that is welcoming and inclusive.

During the last meeting, the Committee was presented with a comprehensive Ten-Point Diversity, Equity, and Inclusion Plan that was led by a Steering Committee in collaboration with Employee Resource Group, Subject Matter Experts, and Cross-functional Business Units. The seven internal facing commitments managed by the Office of Civil Right and Inclusion were designed to 1) cultivate an equitable work environment in which all staff have a fair opportunity to reach their fullest potential; and 2) establish and ensure processes, procedures and policies that enable diversity, equity, and inclusion.

Organized around accountability, transparency, and education, these three key principles, are not just about doing the right thing, but they are also a strategic business priority that will lead to creativity and innovation by a workforce that reflects the communities in which we live and work, and, most importantly, a workforce that is engaged and feels valued and heard.

In September, challenged by the Board to ensure that the Plan was aggressive and as robust as possible, the Plan was further accelerated and broadened to launch targeted initiatives. This included programs for career development and expanded training and development to ensure a culture that can communicate with each other effectively.

Investment

NYPA’s commitment to, and investment in, diversity, equity, and inclusion extends beyond the Office of Civil Rights and Inclusion. In fact, on a daily basis, cross-functional diversity, equity, and inclusion champions in other Business Units advance initiatives and programs across the organization. In doing so, the Authority will achieve such values and aspirational goals for an incremental budget investment of \$7 million.

Outcomes

The Diversity, Equity, and Inclusion Plan presents a path for the next five years where NYPA will establish diversity, equity, and inclusion as a value and as a priority in its VISION2030 Strategy.

- *The Human Resources department is currently working on the career pathing framework. They have engaged the organization to develop values that include diversity, equity, and inclusion.*
- *The Office of Civil Rights and Inclusion has also been working with Talent Development and recently launched a training for all managers aimed at mitigating bias in performance reviews for a more effective and motivating experience for the managers, also, more importantly, for their direct reports.*
- *The Office of Civil Rights and Inclusion has developed Key Performance Indicators and refreshed its baseline metric analysis which is expected to grow and expand as the programs mature.*

- *The Office of Civil Rights and Inclusion has engaged the Employee Resource Groups, activated them around the area of recruitment.*

The Office of Civil Rights and Inclusion hopes that through its efforts everyone will see themselves as champions and leaders of diversity, equity, and inclusion. The goal is that everyone will feel empowered to make changes within their sphere of influence. Certainly, people of color will see themselves reflected across NYPA's workforce and leadership, and, in so doing, they will want to join the Authority's ranks to innovate and thrive.

SUPPLY DIVERSITY

"Ms. Victoria Daniels, Manager of Supplier Diversity, provided the following report:

Build Capacity

At the last meeting, the 11 proposed Supply Diversity DEI initiatives that remove barriers and increase capacity for M/WBEs were discussed. It was voiced that the overarching goal was to grow the supply chain by driving economic development in local communities. The members, however, asked that staff enhance this initiative to be more impactful to the Authority's suppliers.

Accelerating Path to Promote Supplier Diversity

The 11 Supplier Diversity DEI initiatives have been refreshed to increase the breadth and stretch of the program from a local to a national level, finding new M/WBE suppliers and contractors who provide the goods and services needed by the Authority.

NYPA can assist by collaborating with not-for-profits and the local economic development organizations; creating M/WBE educational programs and academies; expanding M/WBE network locally and nationally; increasing and developing partnering opportunities with NYPA's existing supplier base; and developing a Mentor Protege program with a full-blown training component that will be available virtually and in person throughout New York State.

Investments

- *The issues facing small M/WBE businesses is insurance and bonding. NYPA will work with its Insurance Group to expand its Owner Controlled Insurance Program ("OCIP"). This will allow more suppliers to bid and participate on NYPA's projects, equating to fewer single- and sole-source awards.*
- *NYPA is on the right track with targeted marketing/outreach events. A recent IT outreach event resulted in new relationships with M/WBEs and substantial new awards during the month of November.*
- *DEI policies and procedures are integral to the success of the program. Targeted enterprise-wide, mandatory DEI training is the key to successfully meeting the Supplier Diversity goals.*
- *Supplier Diversity have started to review the Credit Card Policy and is leveraging its external support to build-out a detailed Supplier Diversity Roadmap that will address the 11 initiatives.*
- *By year's end, Supplier Diversity will have participated in nine M/WBE events and eight supplier training webinars on the NYPA.gov website.*

Outcomes

Future outcomes that will be realized and beneficial to NYPA include:

- *completion of the goal to modify the policies and procedures to remove barriers and assist firms in increasing the capacity of their businesses.*

- decrease the amount of single- and sole-source awards.
- award more contracts to M/WBEs; increase the M/WBE spend; and increase the pool of eligible M/WBE suppliers.

The five-year incremental budget investment request for Supplier Diversity is \$12 million. In addition to the increase for M/WBE spend, this incremental budget investment in the Supplier Diversity Program will help NYPA create true economic development opportunities in local communities throughout New York State by investing in the education and business development of small businesses. If NYPA is able to help the businesses build a firm foundation, those businesses can give back to the communities in which they reside. Jobs and wealth can therefore be grown. These businesses will be ready to become sub-contractors to NYPA's primes, or even be capable of bidding as primes on procurement opportunities.

The success of the program will be realized when NYPA can boast that it has helped a firm build, grow, and sustain; then that firm can help others do the same. NYPA's strength is in the community, and NYPA seeks to expand communities to include a greater expanse of M/WBE suppliers that are not only partners, but, potentially, a pipeline for Environmental Justice and the Authority's internal mentoring programs.

This is also an opportunity for NYPA to continue to be at the forefront of Supplier Diversity Best Practices, showing that it is more than a regulatory/compliance program. To have a program built on a solid business development foundation of community and economic development that partners with Environmental Justice is beneficial for NYPA as not many, if any, Supplier Diversity programs are moving in this space. NYPA had discussions with M/WBEs, Suppliers, and economic development organizations throughout New York State, specifically in the Buffalo region in the North Country, and all of them are interested in partnering with the Authority. They all fervently believe in NYPA's mission to bring economic development and growth, not only to M/WBEs and small businesses that work with NYPA, but also all areas in NYS. This will enable NYPA to continue to be the Supplier Diversity shining star of best practices in NYS.

ENVIRONMENTAL JUSTICE

"Ms. Kaela Mainsah, Senior Manager of Environmental Justice, provided a report on the two commitments that the Environmental Justice ("EJ") Department has made to support the DEI initiatives.

- *EJ is committed to diversifying the pipeline of future clean energy workers.*
- *EJ has a commitment to Pathways in Technology ("PTECH") which is a program where High School students graduate with both a High School Diploma and a no-cost Associate Degree. NYPA will be joining a network of PTECH scholars and industry partners, worldwide, who have made PTECH the core of their workforce pipeline. Additionally, EJ is committed to investing in scholarship programs for students who live in communities surrounding NYPA's facilities.*
- *EJ has developed an enterprise-wide employee service program, so that NYPA's resources, time, and expertise, can be shared for the benefit of its host communities.*
- *In addition to supporting the DEI initiatives, NYPA's broader environmental justice commitments will accelerate the Authority's path toward Environmental Justice and Equity.*
- *New York State has recently embarked on several ambitious climate-related legislations focused on benefitting historically disadvantaged communities, encompassing low-income*

communities, communities of color, and communities that have historically been subject to negative environmental factors.

- *NYPA's workforce is actively involved in developing the plans for the climate change legislation. NYPA is in a unique position to demonstrate corporate responsibility and the prioritization of underserved communities in the just transition to a clean energy economy.*
- *NYPA's traditional EJ programs provide energy literacies through STEM, workshops for adults, and energy projects. All these programs will be enhanced through the DEI commitments.*

Investments

NYPA PTECH Scholars Program

- *NYPA will be making a 5-year commitment to schools in each NYPA region.*
- *NYPA will commit to increase the number of PTECH Partner Schools to 10 by 2025; this will represent 720 PTECH Scholars over that time period.*
- *NYPA will be joining existing PTECH partnerships with a defined curriculum with an energy-related focus.*
- *NYPA is committed to establish partnerships, and this will give the Authority time to develop career pathways, mentors, and appropriate internships to support these students.*
- *The EJ team will be working with NYPA's suppliers and customers in the PTECH commitment to provide energy industry career opportunities.*

Future Energy Leaders Scholarship

Community-based partners from existing stakeholders in each region that NYPA has operations have been identified for Industry and Community Partnership Scholarship programs. These organizations already have a great track record of disbursing industry partnerships and scholarships. NYPA plans to disburse ten scholarships per year for the first two years, building up to 20 scholarships per year by the end of 2025.

Employee Community Volunteer Corps

The Employee Volunteer Corps allows for opportunities to serve and share technical expertise. Many NYPA community partners and community-based organization face barriers to energy project implementation. NYPA is exploring opportunities for the Authority to share best practice around its clean energy business.

Customer Energy Solutions

Over the next five years, NYPA's goal is to target, channel and invest at least \$500 million in Customer Energy Solutions in disadvantaged and Environmental Justice communities. Through Smart Street Lighting programs, Community Solar, Energy Efficiency and the EVolve New York Electric Vehicle Infrastructure programs, NYPA will prioritize its investments and seek future opportunities in communities of color and historically disadvantaged communities.

Through programs in Commercial Operations, NYPA will be promoting energy equity and providing environmental and significant emissions reductions in communities that have historically carried the burden of industrial processes.

Outcomes

- *At the end of five years, NYPA expects to have made significant contributions populating the pipeline of a diverse workforce, not just at NYPA, but for the energy industry, in general.*

- *NYPA will have created new opportunities and career pathways for students to pursue higher education.*
- *NYPA will be promoting energy equity and creating a more inclusive society. Through its Commercial Operations investment, NYPA will be able to demonstrate the positive impact of the Authority's operations of historically benefitting disadvantaged communities.*

After two years of program implementation, the Authority intends to conduct a detailed economic and demographic analysis of the program and stakeholder impacts and will make appropriate adjustments.

In summary, the cost of program administration, paid internships, scholarships, and volunteer programs require an investment of approximately, \$3.26 million. Incremental customer energy solutions spent in EJ communities, \$500 million.

In conclusion, Ms. Pizzo said that staff developed preliminary metrics to represent building pipelines, demonstrating values, developing staff, growing leadership, and scholarships. Staff will use the metrics to track and measure the success of the program. Additional metrics will be added in the future and staff will come to the committee next year in Q1, and throughout the year, to present members with additional metrics as the program matures.

NYPA is requesting that the Governance Committee approve the Plan with a budget of \$22.3 million dollars over five years to achieve its commitments and its outcomes for diversity, equity, and inclusion. This investment is intended to have long-lasting impacts, giving staff skills that they can apply to their careers and day-to-day lives, provide M/WBEs with economic opportunities that can grow future business, and provide disadvantaged communities with energy efficient infrastructure and educational opportunities to build careers for years to come."

Following discussions, the Governance Committee unanimously agreed, and recommended that the Plan investments be increased from \$22.265 million to \$25 million. This action was also recommended for adoption by the full Board of Trustees at their December 9th meeting.

a. Ten-Point Racial Justice and Equity Plan – Authorization

The President and Chief Executive Officer submitted the following report:

“SUMMARY

The Trustees will be requested at their December 9, 2020 meeting to approve the Authority’s Ten-Point Racial Justice and Equity Plan (‘Plan’).

The Plan aims to move the Authority towards greater diversity, equity and inclusion in its workforce, supplier base, and community impact through a variety of internal and external initiatives that will ultimately increase the representation of Blacks across NYPA and the energy industry. Through this Plan, NYPA will increase its investment in the Office of Civil Rights and Inclusion, and the Environmental Justice and Supplier Diversity programs from \$5 million to \$22.265 million.

The Governance Committee is requested to recommend to the Trustees the approval of the Authority’s Ten-Point Racial Justice and Equity Plan and incremental investments of \$22.265 million to achieve the outcomes associated with the Plan.

BACKGROUND

In 2017, the Authority established the Office of Civil Rights and Inclusion (‘OCRI’) to lead its diversity, equity, and inclusion (‘DEI’) initiatives. Initially OCRI focused on employee engagement around DEI to build a critical mass of champions as a precursor to embedding future DEI programs successfully. The program aligns with industry best practices with a focus on three main pillars: Building a Diverse Workforce, Leadership Accountability and Recruitment and Development.

Following the George Floyd murder and the national outrage and dialogue it precipitated on systemic racism in our society, President Quiniones engaged with employees through a Special All-Hands Meeting on June 1, and conversations with representatives of NYPA’s Multicultural Employee Resource Group. As a result, President Quiniones tasked a Working Group comprised of members of the Office of Civil Rights and Inclusion, Environmental Justice & Sustainability, Human Resources and Talent Development, Labor Relations, and the Chief of Staff with developing recommendation for concrete steps that NYPA could take to further racial justice and equity, establishing NYPA as a leader in the public utility industry.

Indeed, from Albany to New York City, historic moments of inclusion have occurred, and New York state has taken concrete steps to address systemic racism and establish social justice:

- Governor Andrew M. Cuomo signed landmark legislation in June to create greater police accountability.
- New York City disbanded its local anti-crime units amid activist complaints that the plainclothes police were undermining trust in the community following a ‘disproportionate percentage of complaints against them and shootings,’ according to the city’s Police Commissioner.
- Governor Cuomo declared June 19, 2020 ‘Juneteenth’ a State Holiday — The holiday is meant to commemorate the emancipation of 4 million slaves, but particularly the small handful who were not aware that emancipation had come months earlier.

In addition, discussions abounded around the role of corporations in perpetuating the social and economic inequity experienced by Black and other people of color. According to

McKinsey, the racial wealth gap in the US is persistent and creates two negative impacts for Black families:

- The first is the human impact – the health and well-being of Black Americans and Black communities as they struggle to have the security needed to thrive in our economy.
- And second, is the economic impact – where it is known that this gap not only affects Black Americans but also impeded growth of the US economy as a whole.

According to the WSJ article – ‘Your Company Says Diversity Is a Higher Priority, Now What?’, ‘This is a matter of fixing a broken system. Fostering diverse and inclusive workplaces could also boost companies in big ways, including improving financial performance and sparking innovation, research shows. Just 0.8% of Fortune 500 chief executives and 8% of professionals are Black, according to data analyzed by the Center for Talent Innovation.’

Historically, as the largest state-owned public utility in the US, the Authority has led by example and served as a model for the energy industry. Following the call to action to address racial inequality and the Governor’s activist lead, the Authority joined with the American Association of Blacks in Energy (‘AABE’) and its commitment to increase representation of African Americans in employment, leadership, business contracting and workforce development in the energy sector.

At the September 23, 2020 meeting, the Authority presented a holistic, Ten-Point Racial Justice and Equity Plan with internal and external facing commitments intended to build a more diverse and equitable workplace, leverage NYPA’s resources and experience to increase the number of MWBEs supporting the clean energy transition, and increase the pipeline of clean energy workers through the expansion of NYPA’s community STEM programs and scholarships that afford students in Environmental Justice communities with opportunities to acquire industry experience. The Authority provided details of the Plan, a 3-year endeavor with an estimated incremental investment of \$5 million that in effect doubled the investment in Diversity, Equity, and Inclusion to \$10 million.

However, a fully engaged and committed Governance Committee challenged the Authority to enhance the Plan, i.e., the investment, deliverables, and outcomes necessary, and ensure the undertaking is as aggressive, robust, and bold as possible.

It is important to note that the Office of Civil Rights and Inclusion is not alone in driving the tenets of diversity, equity, and inclusion across the Authority. Indeed, key stakeholders such as Talent Development, Employee Relations, and other business units, together with people leaders across the Authority drive diversity, equity and inclusion through career development initiatives, targeted training modules, one on one coaching, and development of individual contributors. In effect, over 150 staff cross functional roles drive some 85,000+ hours attributed to developing and expanding the Authority’s pool of inclusive leaders.

We believe that the Plan we are presenting for your consideration is aggressive and bold.

DISCUSSION

The Governance Committee is requested to adopt a Ten-Point Racial Justice and Equity Plan aimed at building a more diverse, equitable and inclusive workforce.

The Plan, now a 5-year program, consists of the following internal and external commitments:

Internal Commitments

1. *Reaffirm NYPA's commitment to building and maintaining a diverse, equitable and inclusive culture.* The Plan will establish DEI as one of NYPA's top priorities and values and will embed it into NYPA's VISION2030 Strategy; create a DEI communications strategy and an organized working group to inform and direct the Authority's overall DEI strategy.
2. *Ensure that NYPA's processes, policies and procedures are transparent and free from bias.* Through benchmarking and data analysis, the Authority will be informed on ways to shape its strategy and recommendations on how to become more diverse and inclusive as well as track progress and drive reports for leadership. Employees will enjoy greater transparency and access to information to better manage their career path and experience in the workplace. For example, the AAO and Employee Relations processes will be amplified, and a training module related thereto established. The ERG governance will be formalized to grant employees greater ownership and direct benefits associated with being an active ERG leader. In addition, job categories, job descriptions and career paths will be re-engineered to create consistency and easily accessible clear career paths across the organization.
3. *Expand ongoing training to NYPA employees on antiracism, unconscious bias, microaggression, and cultural competency.* Ongoing training, expanded to include civility and respect, will build cultural competency, and create psychological safety among staff who can engage in courageous conversations about racism and other difficult topics, as well as develop a culture of upstanders against racism and bias. The Plan will also facilitate new hiring and selection processes and training.
4. *Create a Chief Diversity, Inclusion and Equity Officer position, reporting to the President and CEO and to the Chief Human Resources and Administration Officer – and increase investment in the office of Civil Rights and Inclusion.* To ensure the DEI goals of the Plan and NYPA are met, the DEI leader must be empowered with the authority and flexibility to engage at all levels of the organization as the primary advocate for the advancement of diversity, equity and inclusion. Adequate resources, such three additional full-time staff, are critical if the DEI program is to be successfully advanced.
5. *Invest in NYPA's Black employees and create pathways for career development and upward mobility.* The Authority will create specific and measurable development plans for each employee that takes into account current and future opportunities and provides stretch assignments. In addition, strategic partnerships to develop and build management and leadership capabilities and cross-functional knowledge necessary to lead successfully.
6. *Cast a wider net and secure a diverse slate of applicants for vacancies by partnering with professional organizations such as the American Association of Blacks in Energy, Historically Black Colleges and Universities and local and national colleges and universities.* The Authority will design a digital presence with the aim of showcasing NYPA's diverse talent and attracting increased interest and applications from diverse talent.
7. *Partner and support NYPA's employee unions at the national, regional, and local levels and invest in their diversity, equity and inclusion programs and initiatives.*

External Commitments

8. *Leverage NYPA's experience, resources and purchasing power to build capacity and access to MWBE firms.* The Plan will strengthen NYPA's brand as a diverse organization that welcomes and encourages a diverse supply chain with greater opportunities for MWBEs through a new Mentor-Protégé Program. In addition, the Plan will boost the ability of diverse firms to qualify for secure bonding/capital access and work as Prime Contractors on NYPA/Canals projects. The Authority will be able to monitor increased spending with diverse firms by establishing goals and KPIs for

business units to meet. The Supplier Diversity Program will advance opportunities for MWBEs by developing a strategic program roadmap, launching an enterprise-wide training program and hosting regional supplier diversity events.

9. *Broaden NYPA's community-based STEM, student internship and mentorship programs to increase the pipeline of utility and clean energy workers of tomorrow – including the creation of a targeted college scholarship program.* The Plan will build a pipeline and develop Black Indigenous People of Color ('BIPOC') students as employees for tomorrow by establishing NYPA's P-Tech Program for students in Environmental Justice host communities. Building industry and educational partnerships to award regional scholarships to students in Environmental Justice host communities will also boost the pipeline of future NYPA and energy industry employees. Ultimately, the Plan through Environmental Justice will establish 100 paid internships sourced from 10 P-Tech Partner schools as well as 20 annual scholarships with industry and community partners.
10. *Create an enterprise-wide employee service program dedicated to understanding racial justice through our clean energy business, such as community solar, for example, and energy sustainability work in environmental justice communities.* The Plan will provide NYPA employees with experience in, and exposure to diverse communities providing firsthand knowledge on how to facilitate, lead and partner with different communities by enhancing the existing Paid Volunteer Policy to include an expanded comprehensive monthly calendar of volunteer opportunities.

FISCAL INFORMATION

The estimated incremental investment for the Plan is approximately \$22,265,000 over five years. Detailed requests and justifications for funding of specific components of the Plan will be presented during future budget proposals. Funding, as may be approved for each of the components, will be provided from the Operating Fund.

RECOMMENDATION

The Chief Diversity, Equity and Inclusion Officer requests that the Governance Committee recommends that the Trustees approve the Authority's Ten-Point Racial Justice and Equity Plan and incremental investments of \$22.265 million to achieve the outcomes associated with the Plan as described above.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below."

Ms. Nancy Harvey, Chief Diversity, Equity & Inclusion Officer, Victoria Daniels, Manager, Supplier Diversity and Kaela Mainsah, Senior Manager, Environmental Justice, provided highlights of staff's recommendation to the Committee.

The Governance Committee unanimously agreed and recommended that the Plan investments be increased from \$22.265 million to \$25 million. This action was also recommended for adoption by the full Board of Trustees at their December 9th meeting.

On motion made by Trustee McKibben and seconded by Vice Chair Nicandri, the following resolution, as recommended by the President and Chief Executive Officer, was unanimously adopted, as amended.

RESOLVED, That the Governance Committee hereby authorize the Authority's Ten-Point Racial Justice and Equity Plan and incremental investments of \$22.265 million to achieve the outcomes associated with the

Plan as recommended in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

5. **CONSENT AGENDA:**

- a. **Approval of the Minutes of the Joint Meeting of the
New York Power Authority and Canal Corporation
Governance Committee held on September 23, 2020**

On motion made by member Anthony Picente and seconded by member Eugene Nicandri, the Consent Agenda was adopted.

b. Review and Approval of New York Power Authority and Canal Corporation – Guidelines for Procurement Contracts

The President and Chief Executive Officer submitted the following report:

"SUMMARY

This report is to request that the Governance Committee review and recommend approval by the full Board of Trustees and the Canal Corporation Board of Directors the revised NYPA and Canal Corporation Guidelines for Procurement Contracts.

BACKGROUND

Pursuant to Subsection C.5 of the Authority's Governance Committee Charter relating to Reports, the Vice President – Strategic Supply Management is required to report to the Committee at all regularly scheduled meetings and the Committee has the authority to require Procurement and other staff to prepare additional reports and to produce documents for Committee review.

For NYPA and the Canal Corporation, please note the following changes to the Guidelines for Procurement Contracts as fully detailed in Exhibit '5b-A-1' for NYPA and '5b-A-2' for Canal Corporation:

1. Section 2 DEFINITIONS
Update and addition of certain definitions including:
 - a. "Non-procurement contracts", Non-Procurement Contracts include direct and indirect placement of advertisements with radio, television, print and electronic media.
 - b. "Purchase Order Release" is a single order issued for goods or services in accordance with the terms and conditions of a Value Contract.
 - c. "Value Contract" Master Service Agreement for goods and services with specific target value and term.
2. Section 3 SOLICITATION REQUIREMENTS
 - a. Addition of paragraph K. 9:
"Services are required on a more expedited basis than the competitive procurement process will allow. Requesting business units must demonstrate the urgency of the project and that awardee is cost-effective and qualified in the subject area. Services shall be for specific scopes of work in an amount not exceeding \$500,000 and are subject to the approvals stated in Section 3.D."
 - b. Addition of paragraph T:
"Prior to entering into any binding relationship with a third party (e.g., written agreement or report of understanding (MOU)) in pursuit of any joint or collaborative development project, the office of SSM and the Law Department ("Law") must be notified regarding the procurement and on the issue of whether and to what extent the projects falls within the constraints of the Authority's procurement regulations and enabling legislation. SSM and Law should be brought into any such project in the development process.

Provided that the Authority has statutory authority to develop or otherwise participate in a project developed, in whole or in part, in collaboration with a third party, the following minimum criteria must be met:
 - (i) the Authority's participation must be in response to a solicitation issued by the State or other public entity pursuant to a competitive selection process; and

- (ii) the construction of any asset to be owned by the Authority must comply with all applicable laws, including but not limited to prevailing wage requirements and goals established for the use of minority enterprises (e.g., minority- and women-owned business enterprise (MWBE), service-disabled veteran owned business (SDVOB)); and
- (iii) goods and/or services required to develop and implement the project must be sourced and procured in accordance with, and subject to, either (a) the Authority's Procurement Guidelines; or (b) the requirements of the third-party collaborator governing the competitive procurement of goods and services, provided that SSM has been furnished with a copy of such requirements which demonstrate, in SSM's judgement, that a competitive procurement or equivalent has been or will be undertaken.

Prior to execution any underlying agreement (i.e., joint development agreement, MOU, etc.) an internal award recommendation shall be memorialized and approved by the VP SSM and the responsible Business Unit head."

3. Section 6 AWARD OF CONTRACT

a. Update Paragraph E as follows:

"The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions. However, at the sole discretion of the Vice President of SSM may approve a Business Unit's written justification for a contract term exceeding 5 years or reasonable extension of such a contract".

b. Add Paragraph F as follows:

"For construction value contracts purchase order releases maybe issued up to the term limit of the value contract. The term of a construction purchase order release shall be as required to complete the work assigned. The term of the value contract shall be extended accordingly."

4. Section 7 CONTRACT PROVISIONS for NYPA only
Contract Attachments add

18. "Appendix "P" (Non-Bulk Electric System (BES)) (Information Security Requirements for Vendors and External Partners non-Bulk Electric System)"

19. "Appendix "P" for BES (Information Security Requirements for Vendors and External Partners for Bulk Electric System)"

5. Additionally, there are corrections of certain inconsistencies, grammatical, format and otherwise.

DISCUSSION

Pursuant to the Authority's implementation of the Public Authorities Accountability Act of 2005 ("PAAA"), as amended, the respective Authority and Canal Corporation Governance Committee reviews the Guidelines for Procurement Contracts and approves any changes to such Guidelines. These Guidelines have been amended as deemed advisable and necessary.

FISCAL INFORMATION

There will be no financial impact on the Authority or the Canal Corporation.

RECOMMENDATION

The Governance Committee is requested to review the revisions to the respective Guidelines for Procurement Contracts (as set forth in the copies attached hereto as Exhibit '5b-A-1' for NYPA and Exhibit '5b-A-2' for Canal Corporation) and to recommend adoption by the full Board of Trustees and the Canal Board of Directors at the meeting to be held on December 9, 2020."

On motion made and seconded, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, that the Governance Committee recommends the adoption of the Guidelines listed above to the NYPA Trustees and the Canal Corporation's Board of Directors as required by Section C (1) (e) of the Governance Committee Charter; and be it further

RESOLVED, that the Governance Committee recommends to the NYPA Trustees and the Canal Corporation's Board of Directors that the President and Chief Executive Officer be authorized to modify the foregoing policy, as necessary, except in the event that any powers, duties or obligations of the NYPA Trustees and the Canal Corporation's Board of Directors would be affected by such modification.

c. **Proposed 2021 Schedule of Meetings**

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The following schedule of meetings for the year 2021 is recommended:

Date	Boards/Committees	Venue
January 19 (Tuesday)	Finance Committee	Video
January 26 (Tuesday)	Cyber Committee	Video
	NYPA/Canal Board	Video
March 18 (Thursday)	Audit Committee	Video
	Finance Committee	Video
March 30 (Tuesday)	Governance Committee	Video
	NYPA/Canal Board	Video
May 12 (Wednesday)	Finance Committee	Video
May 25 (Tuesday)	NYPA/Canal Board	Video
July 15 (Thursday)	Audit Committee	Video
	Finance Committee	Video
July 27 (Tuesday)	Cyber Committee	WPO
	NYPA/Canal Board	WPO
September 21 (Tuesday)	Finance Committee	Video
September 30 (Thursday)	Governance Committee	WPO
	NYPA/Canal Board	WPO
November 16 (Tuesday)	Finance Committee	Video
December 7 (Tuesday)	Board Training	WPO
December 8 (Wednesday)	Audit Committee	WPO
	NYPA/Canal Board	WPO

RECOMMENDATION

The Vice President and Corporate Secretary requests that the Governance Committee recommends that the Authority's Board of Trustees and Canal Corporation's Board of Directors approve of the proposed 2021 meeting schedule as set forth in the foregoing report.

I recommend the approval of the proposed schedule by adoption of the resolution below."

On motion made and seconded, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the Governance Committee approves the 2021 meeting schedule, as set forth in the foregoing report of the Vice President and Corporate Secretary, and hereby recommends its adoption to the Authority's Trustees and Canal Corporation's Board of Directors.

d. **Committee Appointments**

The President and Chief Executive Officer submitted the following report:

"SUMMARY

The Governance Committee is requested to review the committee appointments indicated below and to recommend its adoption to the Authority's Trustees and the Canal Corporation's Board of Directors.

BACKGROUND and DISCUSSION

The recommended membership of the joint Authority and Canal Committees follows:

Audit Committee

John R. Koelmel, Eugene L. Nicandri (Chair), Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor

Finance Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben (Chair), Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor

Governance Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor (Chair)

Cyber and Physical Security Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni (Chair), Dennis G. Trainor

RECOMMENDATION

I recommend the approval of the above-requested action by adoption of the resolution below."

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the Governance Committee recommends that the Authority's Trustees and the Canal Corporation's Board of Directors adopt the following Committee Appointments:

Audit Committee

John R. Koelmel, Eugene L. Nicandri (Chair), Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor

Finance Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben (Chair), Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor

Governance Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni, Dennis G. Trainor (Chair)

December 1, 2020

Cyber and Physical Security Committee

John R. Koelmel, Eugene L. Nicandri, Tracy B. McKibben, Anthony J. Picente, Jr., Michael A.L. Balboni (Chair), Dennis G. Trainor

6. **Next Meeting**

The next regular meeting of the Governance Committee is to be determined.

Closing

On motion made by member Anthony Picente and seconded by member Eugene Nicandri, the meeting was adjourned by the Chair of the Committee at approximately 10:28 a.m.

Karen Delince

Karen Delince
Corporate Secretary

December 1, 2020

EXHIBITS

For

December 1, 2020

Joint Governance

Committee

Special Meeting

Minutes



**NY Power
Authority**

Diversity, Equity and Inclusion Plan

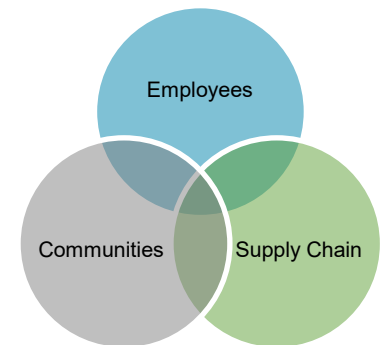
Nancy Harvey
Chief Diversity Equity & Inclusion Officer

Diversity, Equity, and Inclusion

at NYPA & Canals



**Establish NYPA as a leader in DEI,
including developing an internal
culture of inclusion, a diverse
supplier chain, and a commitment
to environmental justice**



NYPA's Commitment to Diversity, Equity & Inclusion

\$682M in investments

- **\$500M Customer Energy Solutions programs in underserved communities** to advance energy equity.
- **Increase the annual incremental MWBE spend to \$160M** by investing in the participation of minority and women owned businesses in the supply chain through mentoring, education and outreach.
- **Triple the incremental investment of DEI programs to \$22.3M** and expand NYPA's commitment to develop, retain and engage staff by investing in training, career and leadership programs and establish programs to build trust and demonstrate equity. Build a pipeline of diverse clean energy workers by providing scholarships and education programs for students of color.

NYPA is committed to implementing industry-leading programs that exemplify its commitment to Diversity Equity & Inclusion in the organization and the community.

Over five years, an investment of \$682M will expand opportunities in underserved communities, strengthen minority and women owned businesses and address social and economic inequities in an environment where all employees are valued and treated fairly.

Office of Civil Rights & Inclusion

The pillars of the commitments initially proposed to address Racial Justice and Equity are:

Accountability

- Conduct audits on programs, policies and governance
- Standardize metrics and KPIs
- Embed diversity in NYPA's values

Education

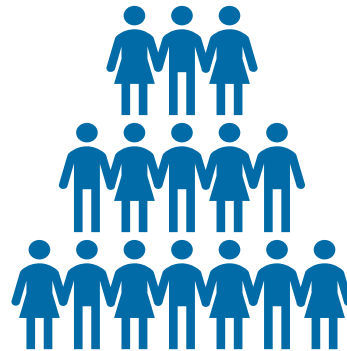
- Expand staff training on diversity, equity and inclusion principles and behaviors

Transparency

- Develop, expand and refine policies, procedures and programs to provide transparency

Goals

- A representative workforce of communities in which we live and work
- Cultural adoption of diversity, equity and inclusion principles
- Accountable staff and leadership
- Transparent metrics, policies, programs and practices



In addition to the activities presented in the 10 Point Plan, NYPA is committing to the following actions to accelerate NYPA's path toward Racial Justice and Equity.

- Accelerate and expand training program to ensure a culture of civility and respect
- Partner with external professional organizations and leadership programs to strengthen the pipeline of Black employees
- Expand DEI staff to regions/Canals to establish local support / ERG subchapters
- Develop custom interview selection tool to ensure a fair hiring process as well as the recruitment and retention of the best talent



Investments Over 5 Years (2021 – 2025)

Human Resources & Administration

Multiple departments across NYPA investing resources on programs to support and advance DEI

- Career pathing and job architecture
- Recruiting strategy and programs
- Advanced analytics and tools
- Staff development programs
- Communication strategy and implementation
- Mentoring/MBA programs

Office of Civil Rights & Inclusion

The OCRI is implementing programs to improve and accelerate the adoption and realization of DEI principles

- Training
- Oversight and governance
- Program partnerships
- Metrics and KPIs
- Recruiting pipeline expansion
- DEI staff enhancement
- Development of hiring/selection process

\$7M Incremental budget investment

Internal Resources

Managers and staff will devote time to participate in DEI training, development and outreach programs

- 150 staff members, full and part-time, to implement programs
- 140,000+ hours in management and staff time for DEI initiatives

Outcomes Over five years, in partnership with leaders, peers and experts, the OCRI will implement programs to establish NYPA as a leader in Diversity, Equity and Inclusion.

- DEI training for 2,000 employees annually expanded to include civility and respect in the workplace
- Audits to inform governance and accountability mechanisms with oversight of all actions
- Increase ERG sub-chapters by 75% at Sites/Canals and increase overall ERG participation by 25%
- Establish 3 leadership and mentoring programs
- Review of 150 policies
- Transparent roadmap and action plan that incorporates feedback from all levels of management/key stakeholders



- A representative workforce in which we live and work
- Cultural adoption of DEI principles
- Accountable staff and leadership
- Transparent policies, programs and practices

**Incremental Budget Investment
\$7M Over Five Years**

Supplier Diversity

The pillars of the commitments initially proposed to address Racial Justice and Equity are:

Build Capacity

- Local and national supplier outreach
- Education and training
- Internal and external communication

Reduce Barriers

- Programs, policies and procedures

Develop Metrics

- Corporate and department goals and KPIs

Goals

- Growing DEI throughout the supply chain
- Driving economic development in local communities where supply chain resides



Accelerating Path to promote Supplier Diversity

In support of the activities presented in the 10 Point Plan, NYPA is committing to the following actions:

- ✓ Develop partnering opportunities with existing supplier base
- ✓ Increase synergy with regional and local MWBE communities
- ✓ Strengthen nationwide presence at supplier diversity events
- ✓ Expand MWBE network locally and nationally
- ✓ Collaborate with not-for-profits and local economic development organizations
- ✓ Create MWBE educational programs and academies



Investments Over 5 Years (2021 – 2025)

Initial Supplier Diversity Program

- Mentor Protégé training materials
- Surety Bonding training
- Marketing/Outreach/Newsletters
- Network Mentoring pilot
- Credit Card Policy update
- Expand use of discretionary spend
- MWBE departmental training

Expanded Supplier Diversity Program

In additional to the original plan:

- Program Roadmap
- Supplier Diversity DEI enterprise-wide training
- Mentor Protégé Program build out & training
- Surety Bonding Program build out & training
- Regional supplier diversity events

Diverse Supplier Spend

- Over five years, increase spend with NYS-certified MWBEs
- Revise policies and procedures with assistance of internal partners
- Partner with internal stakeholders to build pipeline for mentoring programs

\$12M Incremental budget investment

\$160M Incremental MWBE spend

Outcomes to increase MWBE participation in the supply chain

- Double spend with MWBE suppliers
- Increase yearly MWBE goal to 36%
- Grow number of MWBE suppliers by 50%
- Enlarge the number of MWBE suppliers registered in Ariba system by 50%
- Escalate Supplier Diversity Program to a nationally recognized program
- Expand training to entire NYPA/Canals staff annually (approximately 2,000 employees)
- 4x supplier diversity events
- Decreased single and sole source awards



- DEI established throughout NYPA/Canals supply chain
- Strengthen community and supplier relationships
- Accountable staff and leadership
- Transparent policies, programs and practices
- Increased availability of local and regional MWBEs trained on NYPA requirements

Over Five Years:

- **Incremental Budget Investment \$12M**
- **Incremental MWBE Spend \$160M**

Environmental Justice

The pillars of the commitments initially proposed to address Racial Justice and Equity are:

PTECH

- Create pathways for underrepresented students to pursue careers in energy

Scholarship

- Invest in scholarship programs to increase participation and reduce barriers to utility careers

Community Corps

- Expand staff education
- Mobilize staff for participation in dedicated programs in underserved communities

Goals

- Increasing the pipeline of diverse utility and future clean energy workers
- Development of an enterprise-wide employee service program dedicated to participation in NYPAs underserved host communities



In addition to the activities presented in the 10 Point Plan, NYPA has committed to the following actions to accelerate NYPA's path toward Environmental Justice and Equity.

- Establish NYPA as a leader in corporate social responsibility by improving the environment and addressing the needs and concerns of the communities surrounding NYPA assets
- Ensure that all stakeholders are engaged and informed about NYPA's goals, programs and operations
- Prioritize historically disadvantaged communities in the conception and deployment of strategic programs and investments
- Continue to serve NYPA host communities through STEM; community education workshops; community engagement; energy projects.



Investments Over 5 Years (2021 – 2025)

Initial Environmental Justice Proposal

- The DEI initiative will enable the Environmental Justice team to renew commitments to minority stakeholders and increase utility workforce pipeline opportunities through:
 - NYPA PTECH Scholars Program
 - Future Energy Leaders Scholarship
- Increase opportunities for NYPA employees to contribute to NYPA's underserved communities
 - EJ Community Service Corps

Expanded Environmental Justice Program

NYPA PTECH Scholars

- 5 year commitment schools in each NYPA region
- 10 PTECH Partner Schools
- 100 paid internships by 2025
- Partnerships with NYPA customers and suppliers to provide energy industry career opportunities

Future Energy Leaders Scholarship

- Industry and Community Partner Scholarships
- 20 annual scholarships
 - 4/industry & 2/community partner by 2025

Employee Community Volunteer Corps

- Comprehensive calendar of monthly community service events
- Expanded Paid Volunteer Time
- NYPA advisory opportunities for community stakeholders

Customer Energy Solutions Spend in EJ Communities

NYPA will continue to prioritize commercial operations investment in historically disadvantaged communities

- NYPA Smart Street Lighting programs empowers communities to make energy efficient choices
- Community solar and storage projects will provide environmental benefits
- Heating and hot water system upgrades at New York City Housing Authority facilities
- Siting of EV infrastructure and public transit within EJ Communities

\$3.26M Incremental budget investment **\$500M** Incremental customer energy solutions spend in EJ communities

Outcomes

Establish NYPA as a leader in corporate social responsibility by providing programs and services that increase opportunities for historically disadvantaged communities that host NYPA facilities

Establish NYPA PTECH industry and community partnerships in every NYPA region by 2025

- *10 NYPA Partnerships*
- *100 Annual PTECH Internships*
- *720 NYPA PTECH Scholars*

Establish NYPA future Energy Leaders Scholarship

- *Award 70 NYPA Future Energy Leaders Scholars by 2025*



Establish NYPA EJ Community Corps

- *Expand staff community participation protocols and engage NYPA's workforce in community outreach*
- *Comprehensive calendar of monthly community engagement opportunities*
- *ESG reporting of NYPA community engagement*
- *Detailed economic and demographic analysis of impacted stakeholders*

- Increased pipeline of utility and clean energy workers of tomorrow
- Engaged NYPA community that actively contribute to NYPA's underserved communities
- Historically disadvantaged communities benefitting from NYPA programs

Over Five Years:

- **Incremental Budget Investment \$3.26M**
- **Incremental Customer Energy Solutions Spend \$500M in EJ Communities**

2021 Preliminary Metrics

Additional metrics and Key Performance Indicators will be developed as programs mature

Office of Civil Rights & Inclusion			
KPI	Metric	Impact Area	Reporting Period
% Staff Completing Training	90%	Values	Bi-annually
% Development Plans Complete	90%	Development	Annually
% Specialty Program Participation	40%	Development	Annually
# ERG Engagements	30	Engagement	Bi-annually

Supplier Diversity			
KPI	Metric	Impact Area	Reporting Period
% MWBEs added to Ariba	5%	Operational	Bi-annually
% MWBE spend	10%	Operational	Annually
% Outreach events	12	Marketing	Annually
% Increase in discretionary spend	10%	Operational	Bi-annually

Environmental Justice			
KPI	Metric	Impact Area	Reporting Period
# NYPA PTECH partnerships	3	Pipeline	Annually
# NYPA PTECH Scholars	240	Pipeline	Annually
# PTECH Scholars placed in NYPA paid internships	10	Scholarship	Annually
# NYPA employees engaged in PTECH mentorship	4	Engagement	Annually
# NYPA Future Energy Leaders Scholarships	10	Scholarship	Annually
# Volunteer opportunities	4	Engagement	Annually

Overall, NYPA's investment of \$682M in industry-leading programs will exemplify its commitment to diversity, equity and inclusion and expand opportunities in underserved communities, increase minority and women owned businesses and create a culture where all employees are valued.

\$22.3M Path to Future State – Funding and Coordination

Request: The Governance Committee recommends that the Board of Trustees approve the Authority's Ten-Point Racial Justice and Equity Plan, and incremental investments totaling \$22.3M over a 5-year period (2021-2025) to achieve the outcomes described in the plan.

Office of Civil Rights & Inclusion

Fosters an inclusive culture and promotes a diverse and engaged workforce

\$7M

Supplier Diversity Program

Promotes and increases the participation of minority and women owned businesses in the supply chain

\$12M

Environmental Justice

A source for good in neighboring underserved communities

\$3.26M

APPENDIX A

2020/2021 Outcomes

Outcomes

The following activities planned for 2021 will establish the foundation for the path toward racial justice and equity. A dashboard and metrics will be available for Board of Trustees review and comment by Q2 2021.

OCRI

Complete by YE 2020

- Vision and Values Statement
- Activate ERGs
- Initial KPIs and Metrics
- Launched Unconscious Bias Training for 3,000 staff

Complete by 2021

- Steering Committee
- DE&I Audit to review policies, perform analysis and develop roadmap
- Advanced Metrics and KPIs
- Launch additional enterprise training
- Hire additional staff

Supplier Diversity

Complete by YE 2020

- Participate in 9 outreach events
- Develop DEI Supply Chain Roadmap
- Establish Corporate MWBE Goals
- Create 8 Supplier Diversity Webinars
- 2021 Calendar of Events

Complete by 2021

- Launch Surety Bonding Program
- Launch Pilot of Mentor Protégé Program
- Refine Business Unit MWBE Goals
- Revise internal policies and procedure
- Implement Supplier Diversity Marketing Strategy

Environmental Justice

NYPA PTECH Scholars

- Establish Year 1 PTECH partnerships with 3 Schools
 - 15 Paid Internships
 - 240 PTECH Scholars

Future Energy Leaders Scholarships

- Establish community and industry partnerships
- 10 scholarships for underserved students pursuing careers in the energy industry

NYPA EJ Community Corps

- Comprehensive calendar of events
- Report employee volunteer hours
- Analysis of strategic programs to assess NYPA impact on historically disadvantaged communities

APPENDIX B

Racial Justice and Equity Plan Presented on September 23, 2020



**NY Power
Authority**

**Canal
Corporation**

Ten Point Racial Justice and Equity Plan

Nancy Harvey

Director, Office of Civil Rights & Inclusion

September 23, 2020

Racial Justice and Equity Plan

New York Power Authority and Canal Corporation are committed to leading an organization that is diverse, equitable and inclusive. The plan exemplifies NYPA's commitment to Diversity Equity and Inclusion (DEI) and extends beyond the workplace to have a holistic plan that incorporates 3 departments:

Office of Civil Rights & Inclusion (OCRI)

Fosters an inclusive culture and promotes a diverse and engaged workforce

Supplier Diversity Program

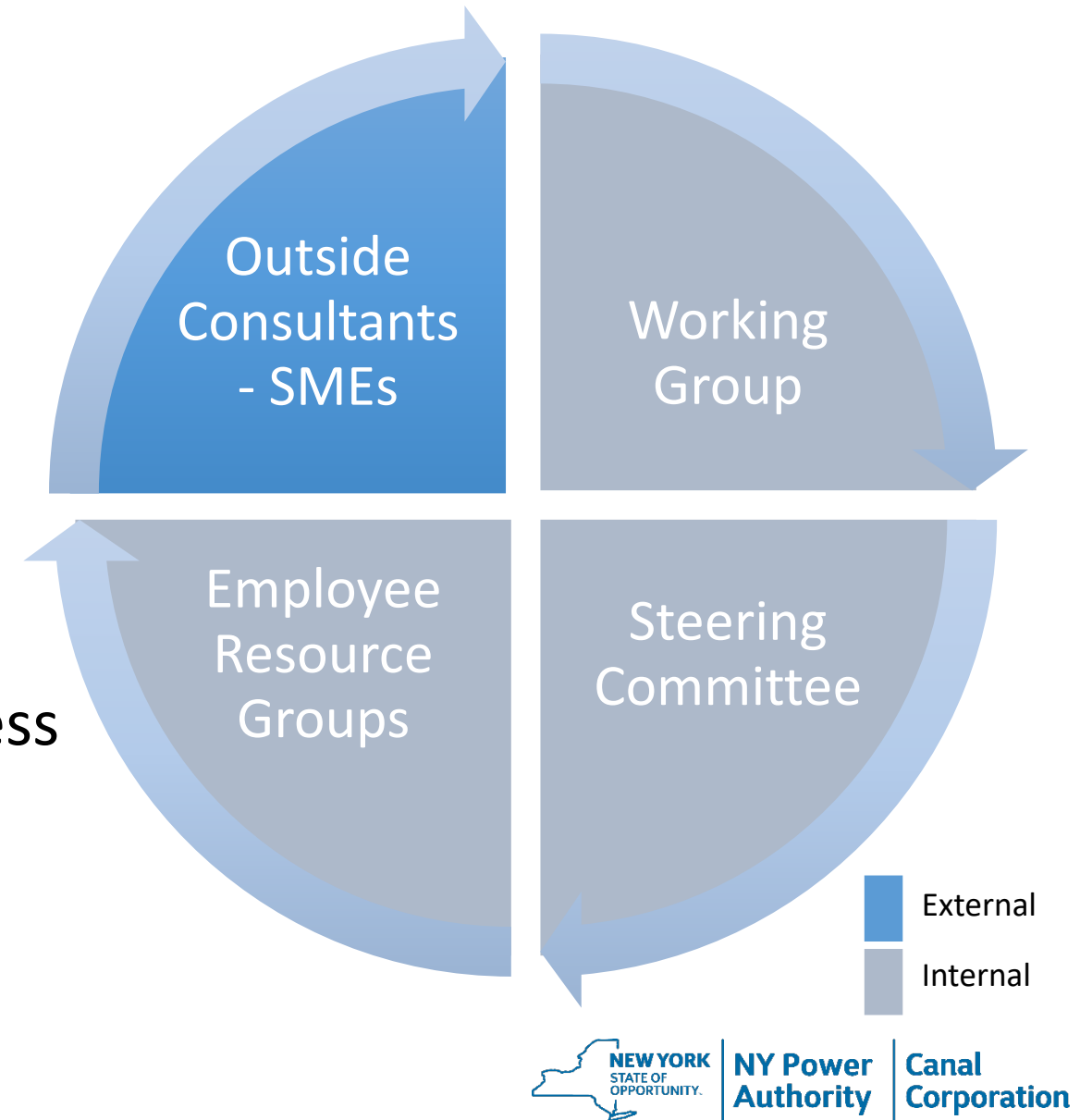
Promotes and increases the participation of minority and women owned businesses in the supply chain

Environmental Justice

A source for good in neighboring underserved communities

Stakeholders – At The Table

- The Executive Office and OCRI lead a several teams consisting of a staff working group, outside experts and a leadership steering committee.
- The working group consulted 53 members of staff throughout the process across business units.



The Office of Civil Rights and Inclusion

Established in 2017, OCRI developed a D&I plan that focused on employee engagement and education in order to build a critical mass of champions as a precursor to embedding future DEI programs successfully. The DEI strategy focused on 3 areas in alignment with industry best practices:

Build an Inclusive Workforce

- Created six Employee Resource Groups (ERG) sponsored by EMC
- 369 core ERG members
- Coordinated 40 ERG events with attendance of over 1,000 employees each year

Leadership Accountability

- Hosted senior leadership briefings and training on DEI
- Consulted DEI experts in the field
- Demonstrated leadership commitment to DEI through actions

Recruitment and Development

- Partnered with Recruitment to develop programs
- Partnered with Environmental Justice & Sustainability on mentorship program
- Trained over 2,000 Canals and NYPA staff on DEI

Diversity Equity and Inclusion Commitments

The recommendations for the DE&I plan focus on three themes:

Accountability

- DE&I Audit
- DE&I and ERG Policy
- Scorecard and KPIs
- EMC/leadership review
- Diversity in NYPA Values

Transparency

- Career Path Framework
- AAO and ER Process clarity
- Mentoring Program
- Policy review
- Career Development Plans

Education

- Unconscious Bias, Bystander/Upstander, Anti-racism training
- AAO and ER process

Diversity Equity and Inclusion Outcomes

- A workforce that represents the communities in which we live and work
- An organization whose culture, behaviors and actions demonstrate that diversity, equity and inclusion are a priority
- Employees and leaders who are educated and accountable for upholding DE&I principles
- Transparent policies, programs and practices that allow employees to achieve their fullest potential

Incremental Investment Over Three Years: \$2.665M



**NY Power
Authority**

**Canal
Corporation**

Supplier Diversity Program

Victoria Daniels

Manager Supplier Diversity

September 23, 2020

Supplier Diversity Overview

Background

- **NYS Executive Law Article 15-A §§310-317** governs the requirements for the participation of minority and women-owned businesses (MWBE) in NYS contracting.
- On 7/15/2019 **Governor Cuomo signed legislation reauthorizing the law** through 12/31/2024 including enhancements to further benefit NYS certified MWBE businesses.

NYPA's Supplier Diversity Program

- Established in 1983.
- Awarded **over \$1B** through direct awards and subcontracting to MWBE's to date.
- In FY1819 NYPA and Canals **MWBEs spend totaled \$88.9M**.
- Organized regional **Supplier Outreach events** in 2019 yielding over 70 exhibitors, 230 companies, and 360 participants.
- Developed Supplier Training Webinars



Compliance

Tracking of
payments to
MWBE's



Regulatory Reporting

to Empire
State
Development



Outreach/ Education

about
NYPA/Canals
Open
Procurements



**NY Power
Authority**

**Canal
Corporation**

Supplier Diversity Commitments

While the Program **continues** to be successful, more can be achieved to increase MWBE participation. The program will focus on the following 3 categories with 11 goals:

BUILD CAPACITY

- Progress **Mentor Protégé Program**
- Develop internal and external **communication roadmap**
- Align with organizational **DEI message**
- Increase **supplier outreach**
- Provide **education and training** to suppliers and staff
- Enhance **organizational branding** around diverse supply chain

REDUCE BARRIERS

- Implement **Surety Bonding Program**
- Modify **Procard policy** to prioritize MWBE suppliers
- Simplify contract **Terms & Conditions** for low risk projects

METRICS

- Establish **Departmental Goals/KPI's**
- Establish **Corporate Goals**

Supplier Diversity Outcomes

Projected Results

- ✓ **Grow** the number of MWBE suppliers supporting NYPA/Canals
- ✓ **Increase** MWBE spend
- ✓ **Strengthen** NYPA's brand as an organization that encourages a diverse supply chain
- ✓ **Enhance** internal and external communications

- ✓ **Foster** networking opportunities between qualified personnel and MWBE firms
- ✓ **Expand** Supplier outreach and education
- ✓ **Increase** bidding and awards of diverse firms
- ✓ **Establish** departmental and corporate MWBE goals with KPI's
- ✓ **Streamline and update** policies and procedures

Incremental Investment

Program development, communication & marketing, staffing, and education totaling \$1.06M



**NY Power
Authority**

**Canal
Corporation**

Environmental Justice Program

Kaela Mainsah

Senior Manager Environmental Justice

September 23, 2020

Environmental Justice Overview

NYPA's Environmental Justice (EJ) program is driven by our commitment to always be a good neighbor to the historically disadvantaged and marginalized communities located near our statewide facilities. NYPA leverages its expertise in energy and energy technology to provide no-cost programs and services that meet the unique needs of our communities.



STEM Education



Community Energy Literacy



Community Outreach and Advocacy



Energy Efficiency Projects

Environmental Justice Commitments

**Increasing the pipeline of
utility and clean energy
workers of tomorrow**

- PTECH Scholars Program
- Future Energy Leaders Scholarship Program

**Community service program
that ensures employees can
contribute to NYPAs
underserved communities**

- EJ Community Service Corps

Environmental Justice Outcomes

PTECH

- Increased number of students of color who pursue studies and careers in the utility industry

SCHOLARSHIP

- Increased numbers of students from NYPA's EJ communities who will be able to pursue an advanced degree in STEM
- Decreased financial burden associated with achieving an advanced STEM degree

COMMUNITY CORPS

- Expanded staff education
- Creation of an enterprise wide employee service program dedicated to understanding racial justice
- Increased benefits for NYPA's neighbors

Total 3 Year Incremental Investment for Initiatives - \$1.275M

Racial Justice and Equity Program Approval

Resolution - The New York Power Authority and Canal Corporation requests that the Governance Committee approve the Authority's Ten-Point Racial Justice and Equity Plan to achieve the deliverables and outcomes with an incremental investment of \$5M over a 3-year period (2021-2023)

Office of Civil Rights and Inclusion	\$2.665M
Supplier Diversity (MWBE Program)	\$1.06M
Environmental Justice Program	\$1.275M

Appendix

Commitments and Associated Outcomes

Reaffirm NYPA's commitment to building and maintaining a diverse, equitable and inclusive culture	
Deliverable	Outcome
Corporate values the include diversity, equity and inclusion	Standards that represent the culture, behaviors and actions of an organization that deems diversity, equity and inclusion as a priority
Including Diversity Equity & Inclusion into the Vision 2030 Strategy	Demonstrates the commitment to diversity, equity and inclusion in NYPA's strategy and priorities
Diversity Equity & Inclusion Communication Strategy Document & RoadMap	Communication Strategy that informs and educates internal and external stakeholders of NYPA's Diversity Equity & Inclusion initiatives and activates individuals to put Diversity Equity & Inclusion principles into practice
Establish a Diversity Equity & Inclusion Policy	Principles to guide decisions and achieve Diversity Equity & Inclusion in NYPA's programs, processes and culture
Charter for Diversity Equity & Inclusion Steering Committee	An expanded cross-functional team, including subject matter experts, and mandate to will review and track the progress of the DE&I plan, report on DE&I initiatives, and make recommendations

Ensure that NYPA processes, policies and procedures are transparent and free from bias

Deliverable	Outcome
Diversity Equity & Inclusion Audit Report	Benchmarks and analysis that will inform/shape our strategy and recommendations on ways to become more diverse and inclusive
Affirmative Action Officer (AAO) processes improvements and training	Transparency around the investigatory process for AAO complaints so employees know how their complaints are processed and what to expect if they are involved in an investigation
Employee Resource Group Policy	Formalize governance for Employee Resource Groups (ERGs) to allow employees to take greater ownership and reap the benefits of Employee Resource Groups
Office of Civil Rights & Inclusion Scorecard	Annual marker of progress for underrepresented groups/key EEO-4 categories and equity indicators
Workforce Diversity Analytics Report	Review of programs, data and analytics will track the progress of DE&I initiatives and hold leadership accountable to respond to findings
Revised Recruitment and Job Posting Policy and communication	More transparency around the process surrounding the selection of candidates improves trust and understanding of career development needs
Create a career path framework	Transparency and clarity around career development and opportunities.

Expand ongoing training to our employees on antiracism, unconscious bias, microaggression and cultural competency

Deliverable	Outcome
Neuroscience of Bias Training Modules	Employees are educated about breaking bias – identifying and mitigating bias in employment activities
Bystander/Upstander Training Module	Employees and leaders are educated on their responsibility to respond and intervene in scenarios involving workplace discrimination
Anti-Racism Training Module	Improved understanding on the history of racism and its ongoing effects
Emotional Intelligence Training -	Equipping middle managers with the appropriate tools to manage teams effectively and understand the needs of their employees

Create a Chief Diversity, Inclusion and Equity Officer position, reporting to the President and CEO and to the Chief Human Resources and Administration Officer - and increase investment in the office of Civil Rights and Inclusion

Deliverable	Outcome
Appointment of a Chief Diversity and Inclusion Officer and hire additional staff and consultants to support the development and roll out of the programs	Successful Implementation of Diversity Equity & Inclusion Program and 10 Commitments through the elevation of Chief Diversity, Inclusion and Equity Officer and increased involvement of President & CEO in Diversity Equity & Inclusion issues.

Invest in our Black employees and create pathways for career development and upward mobility

Deliverable	Outcome
Increase communication and outreach to staff and leadership to encourage and support participation in NYPA's mentoring program	Increase participation of Black and African American and underrepresented employees in NYPA's formal mentoring program. The program will guide mentors to provide coaching and experiences and actively engage mentees to develop skills and actively manage their present and future career goals.
Ensure custom career development plans are created for each employee through tracking, coaching and leadership oversight	Specific and measurable development plans for each employee that factors current and future opportunities and provides stretch assignments

Cast a wider net and secure a diverse slate of applicants for vacancies by partnering with professional organizations such as the American Association of Blacks in Energy, Historically Black Colleges and Universities and local and national colleges and universities

Complete and implement the communications plan for refreshing NYPA's digital and social presence to showcase NYPA's diverse workforce and culture	Digital presence showcases the diverse vision and talent at NYPA, leading to an increase in applications from diverse talent
Modify NYPA's applicant tracking system to have applicants answer a question regarding race/ethnicity	The number of diverse applicants applying to positions will identify gaps in the pipeline and allow for targeted outreach solutions
Increase postings of relevant vacancies to the established list of Black/African American and diverse job boards, schools and professional associations	An increase in posting to diverse outlets should increase the number of diverse job applicants

Partner and support our employee unions at the national, regional and local levels and invest in their diversity, equity and inclusion programs and initiatives

Engage the unions and discuss ways to diversify and promote inclusion in the workforce.	Union participation in NYPA's Diversity Equity & Inclusion Initiatives and greater diversity in union ranks
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Leverage NYPA's experience, resources and purchasing power to build capacity and access to MWBE firms

Deliverable	Outcome
Establishment of a Mentor-Protégé Program	Create a Mentor-Protégé Program that results in the following: 1) Capacity building of current diverse suppliers who can work on NYPA/Canal projects 2) Increase relationship building of current and future Prime Contractors and future pipeline employers for NYPA Mentor Protégé Program / Internship and P-Tech Program
Communication Strategy Document & RoadMap for Supplier Outreach, Supplier Education and a Program Newsletter	Strengthen NYPA's brand as a diverse organization that welcomes and encourages a diverse supply chain through enhanced internal and external communications, outreach and education
Create a Surety Program	Roll out a program that helps diverse firms qualify to secure bonding/capital access in to order to increase capacity of firms that can work as a Prime Contractors on NYPA/Canal projects.
Develop departmental Supplier Diversity Goals, business partners for each business unit and training module for first line supervisors	Increased spending with diverse firms through the establishment and tracking of Diversity Goals and Key Performance Indicators for each Business Unit and increased staff accountability for Supplier Diversity goals.
Establish measurable Corporate Supplier Diversity Key Performance Indicators	Definitive goals and Key Performance Indicators that will provide accountability and visibility into success of program
Identify purchasing opportunities where Discretionary Spend can be used throughout the organization	Site Managers and Business Units identify opportunities and areas where Discretionary Spend Purchases can be made. SDP provides assistance in helping them source diverse suppliers/Increased use of new and diverse suppliers into NYPA/Canal supply chain
Update terms and conditions of procurement agreement for alignment with work being performed	Increased bidding and awards of diverse firms; fewer single and sole source awards
Revised and or new policy NYPA & Canal Credit Card Policy for purchases under \$5,000	Increased spend with diverse firms
Revision of Procurement Policy	Diverse firms gaining a better understanding of their shortcomings; therefore future bids can be improved
Revision of Procurement Policy and Development of a Standard Diverse Firm Bidders List	Updated Policy/Outreach to diverse firms prior to bid posting will create a greater chance of diverse firms bidding on opportunities
Organizational Pipeline Networking Mentoring Roadmap	During the bid review bidders would receive points for participating in a NYPA Mentor Protégé Program /Provide a future pipeline of employers for NYPA Mentor Protégé Program/Internship and P-Tech Program

Broaden our community-based STEM, student internship and mentorship programs to increase the pipeline of utility and clean energy workers of tomorrow – including the creation of a targeted college scholarship program

Deliverable	Outcome
Establish NYPA's P-TECH Scholars Program that ensures students in NYPA's Environmental Justice host communities have a pathway to careers in the utility industry	Development and execution of NYPA's P-Tech program resulting in an increased number of minority students who pursue studies and careers in the utility industry and a three-year implementation plan that includes specific and measurable goals for: <ol style="list-style-type: none"> 1. P-TECH Scholars enrolled in the program (including curriculum and calendar of engagements). 2. NYPA Trained and vetted employees participating in mentorship component 3. Internship placements at NYPA
Establish the NYPA Future Energy Leaders Scholarship Program	The development of industry and educational partnerships to award 5 regional scholarships each to students in NYPA's EJ Communities

Create an enterprise wide employee service program dedicated to understanding racial justice through our clean Employee Resource Group business (e.g. community solar) and Employee Resource Group sustainability work in environmental justice communities

Deliverable	Outcome
To establish a NYPA Environmental Justice Community Service Corp which will create opportunities for NYPA employees to volunteer time for community service initiatives in Environmental Justice communities.	Development of a workplan which will include: a comprehensive monthly calendar of volunteer opportunities, establish of community partner programs, the creation of staff participation protocols and possibly revamping the existing paid volunteer policy to include the NYPA Environmental Justice Community Service Corp.



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APPENDIX C

Racial Justice and Equity Plan Presented on July 28, 2020

NYPA's Commitment to Addressing Racial Justice and Equity



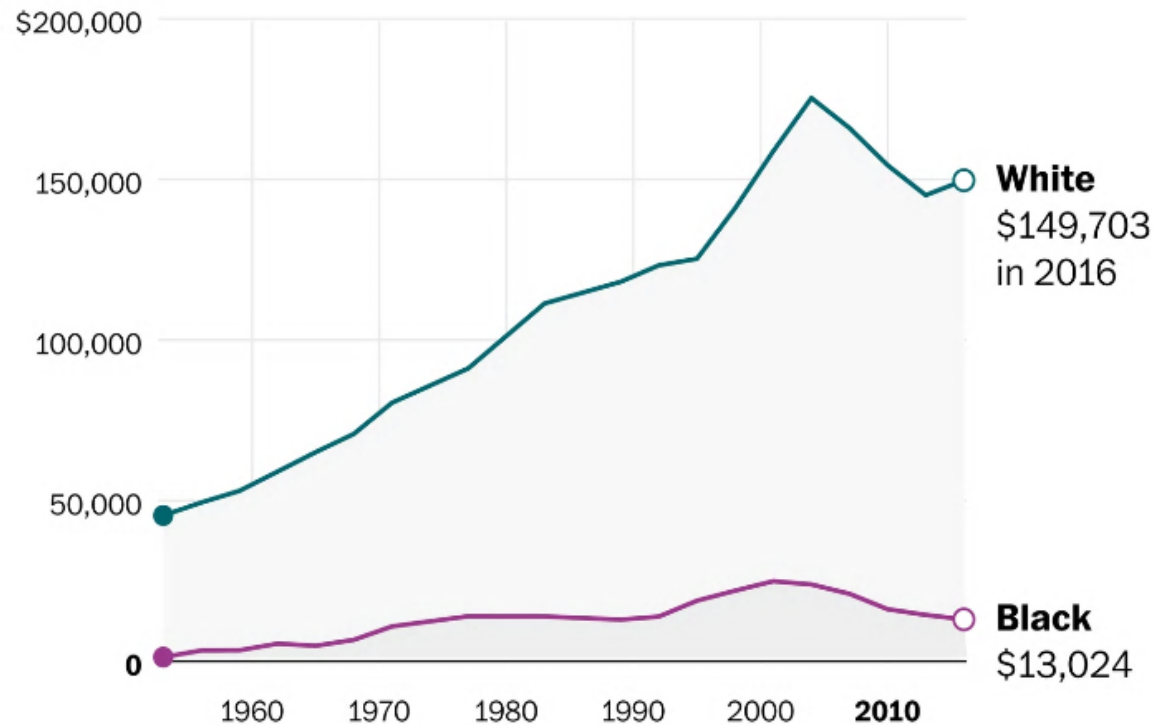
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The gap between the finances of Blacks and Whites is still as wide in 2020 as it was in 1968

White wealth surges; black wealth stagnates

Median household wealth, adjusted for inflation

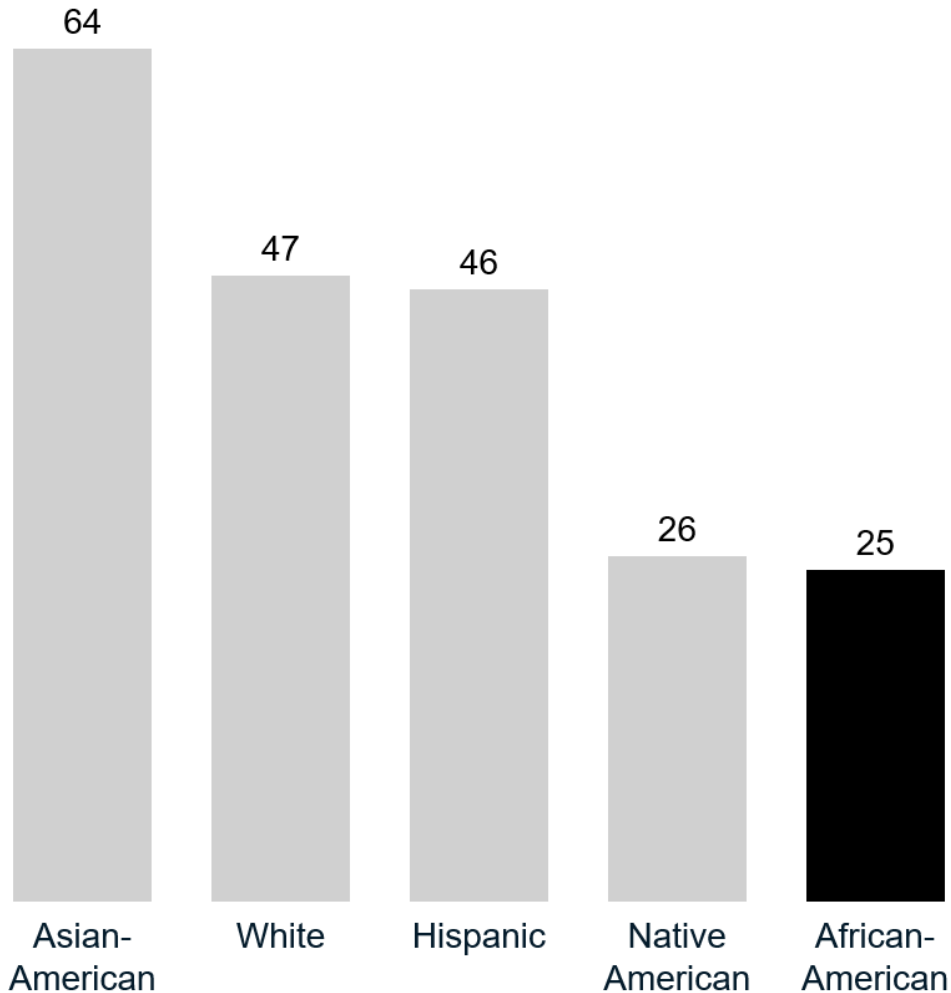


Source: Historical Survey of Consumer Finances via Federal Reserve Bank of Minneapolis and University of Bonn economists Moritz Kuhn, Moritz Schularick and Ulrike I. Steins
THE WASHINGTON POST

- The historical data reveal that no progress has been made in reducing income and wealth inequalities between Black and White households over the past 70 years
- The typical Black household headed by someone with an advanced degree has less wealth than a White household with only a high school diploma
- The wealth gap is even more pronounced among less-educated Americans. A White household whose head has only a high school diploma has almost 10 times the wealth of a Black family with the same education. The fact that Black families start off with so much less wealth makes it difficult to catch up, research has found

Impact on Upward Mobility

% of poor children that will reach the middle class or better as adults



Source: Equality of Opportunity Project, "Race and Economic Opportunity in the United States," 2018

Source: McKinsey

- According to McKinsey, the persistent wealth gap between White and Black families creates two negative impacts:
 1. **Human Impact:** Economic mobility is not equally distributed and is particularly difficult for Black Americans
 2. **Economic Impact:** The racial wealth gap constrains the U.S. economy, leading to up to \$1.5 trillion in lost economic output
- By closing the racial wealth gap, U.S. GDP could be 4 to 6 percent higher by 2028
- A heterogeneous workforce yields more innovation and better performance than a homogeneous one does

The challenges faced by the Black population is compounded by the impact of COVID-19 and systemic racism

Systemic Racism



Black men are 2.5 times more likely than White men to be killed by police during their lifetime. And in another study, Black people who were fatally shot by police seemed to be twice as likely as White people to be unarmed



Mental health research has demonstrated a causal link between experienced racial discrimination and adverse mental health outcomes

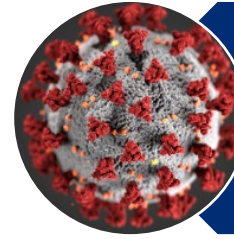
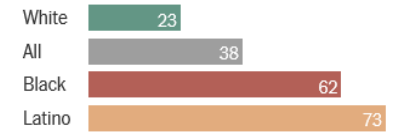


Perceived racism and discrimination, either overt or covert (microaggression) or in the forms of implicit bias have been associated with depression, anxiety, increased substance abuse, feelings of hopelessness and suicide ideation in Black adults and youths

Source: [Nature](#); [American Psychiatric Association](#)

COVID-19 Racial Disparities

Coronavirus cases per 10,000 people



Black and Latino people have been disproportionately affected by the coronavirus in a widespread manner that spans the country, throughout hundreds of counties in urban, suburban and rural areas, and across all age groups



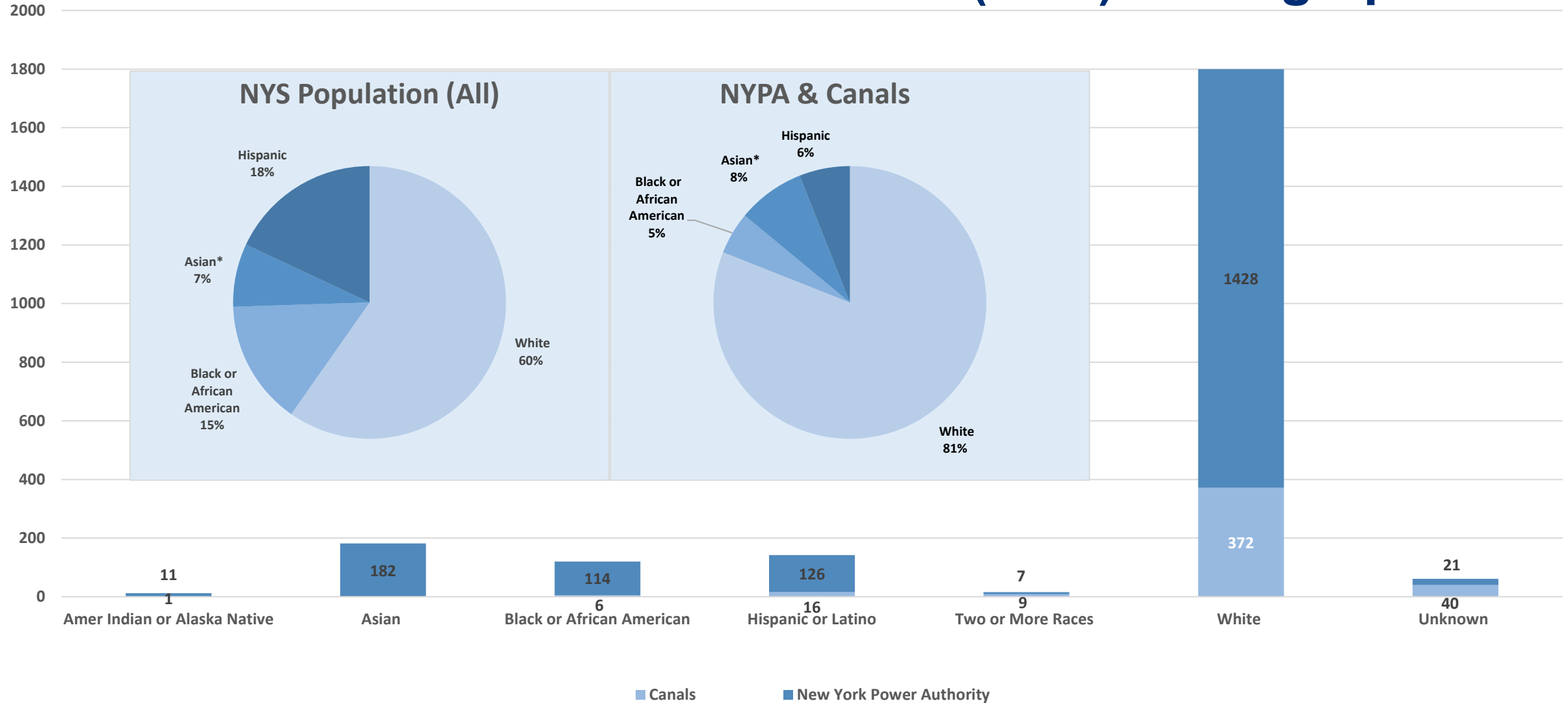
Latino and African-American residents of the United States have been 3X as likely to become infected as their White neighbors, according to the new data, which provides detailed characteristics of 640,000 infections detected in nearly 1,000 U.S. counties



Black and Latino people have been nearly twice as likely to die from the virus as White people, the data shows

Source: [The New York Times](#)

NYPA & Canals vs. New York State (NYS) Demographics



NYPA's Diversity, Equity and Inclusion (DEI) Program

The Office of Civil Rights and Inclusion, established in 2017, initially focused on employee engagement around DEI in order to build a critical mass of ambassadors as a precursor to successfully embed future DEI programs.

The Program aligns with industry best practices with focus on:

Build an Inclusive Workforce

- Created six Employee Resource Groups (ERG) sponsored by EMC
- 369 core ERG members
- Coordinated 40 ERG events with attendance of over 1,000 employees each year
- Quarterly ERG leadership meetings and trainings

Leadership Accountability

- Hosted senior leadership briefings and training on DEI
- Consulted DEI experts in the field
- Demonstrated leadership commitment to DEI through actions
- Conducted formal and informal surveys

Recruitment and Development

- Partnered with Recruitment /HR to develop programs
- Partnered with Environmental Justice & Sustainability on mentorship program
- Trained over 2,000 Canals and NYPA staff on DEI
- Partnered with Corporate Communications on DEI messaging

NYPA's Commitment to Racial Justice and Equity

Maximizing the human potential of everyone in the workplace

Internal Facing

1. Reaffirm NYPA's commitment to building and maintaining a diverse, equitable and inclusive culture.
2. Ensure that our processes, policies and procedures are transparent and free from bias.
3. Expand ongoing training to our employees on antiracism, unconscious bias, microaggression, and cultural competency.
4. Create a Chief Diversity, Inclusion and Equity Officer position, reporting to the President and CEO and to the Chief Human Resources and Administration Officer – and increase investment in the office of Civil Rights and Inclusion.
5. Invest in our Black employees and create pathways for career development and upward mobility.
6. Cast a wider net and secure a diverse slate of applicants for vacancies by partnering with professional organizations such as the American Association of Blacks in Energy, Historically Black Colleges and Universities and local and national colleges and universities.
7. Partner and support our employee unions at the national, regional and local levels and invest in their diversity, equity and inclusion programs and initiatives.

External Facing

8. Leverage NYPA's experience, resources and purchasing power to build capacity and access to MWBE firms.
9. Broaden our community-based STEM, student internship and mentorship programs to increase the pipeline of utility and clean energy workers of tomorrow – including the creation of a targeted college scholarship program.
10. Create an enterprise wide employee service program dedicated to understanding racial justice through our clean energy business (e.g. community solar) and energy sustainability work in environmental justice communities.

NYPA's Commitment to Racial Justice and Equity

Next Steps

1. Partner and collaborate with the American Association of Blacks in Energy (AABE) and develop specific deliverables and desired outcomes by September 2020.
2. Form teams to operationalize (plans, process, metrics, reports, etc) each of the 10 initial commitments.
3. Report progress and status at future meetings of the Governance Committee of the Board of Trustees.

Appendix

Diversity, Equity and Inclusion Steering Committee

- Gil Quiniones - President & CEO
- Justin Driscoll - EVP, General Counsel
- Joseph Kessler - EVP, Chief Operating Officer
- Kristine Pizzo - EVP, Chief HR & Administrative Officer

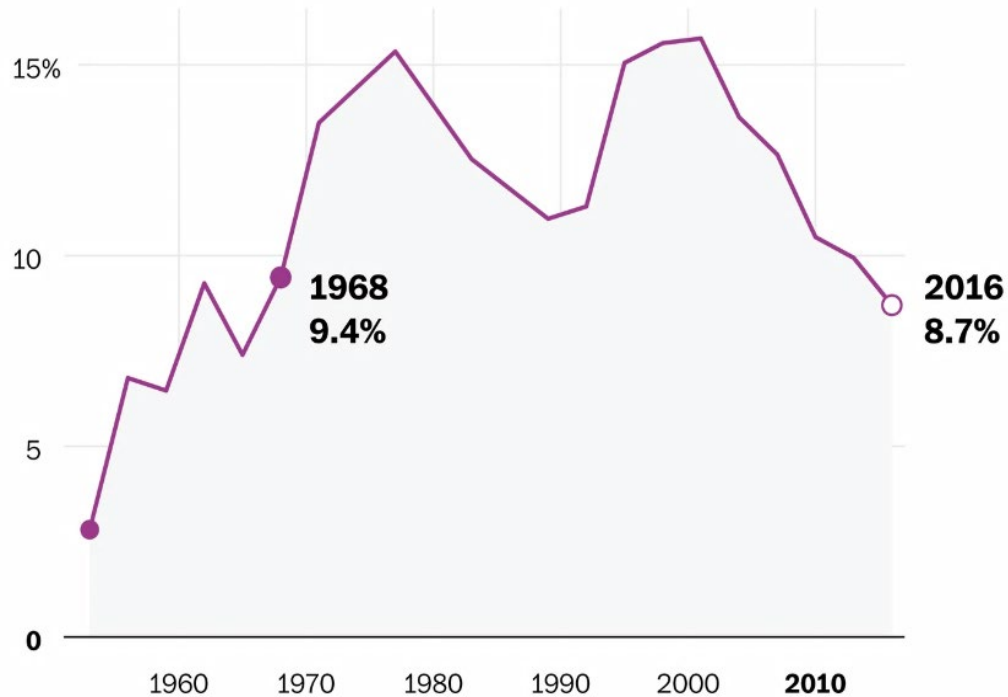
Diversity, Equity and Inclusion Working Group

- Debra Cartagena - Sr. Director Talent Acquisition
- Victoria Daniels - Manager Supplier Diversity
- Eric Firnstein - Labor Relations Manager & STL HR Manager
- Carol Geiger-Wank, Chief of Staff for COO & VP Labor Ops.
- Nancy Harvey - Dir. Office of Civil Rights and Inclusion
- Daniella Piper - VP Digital Transformation & Chief of Staff
- Simone Quartey - Civil Rights & Inclusion Specialist
- Lisa Wansley - VP Environmental Justice & Sustainability

The Washington Post – June 4, 2020

The black-white wealth gap is as wide as in the 1960s

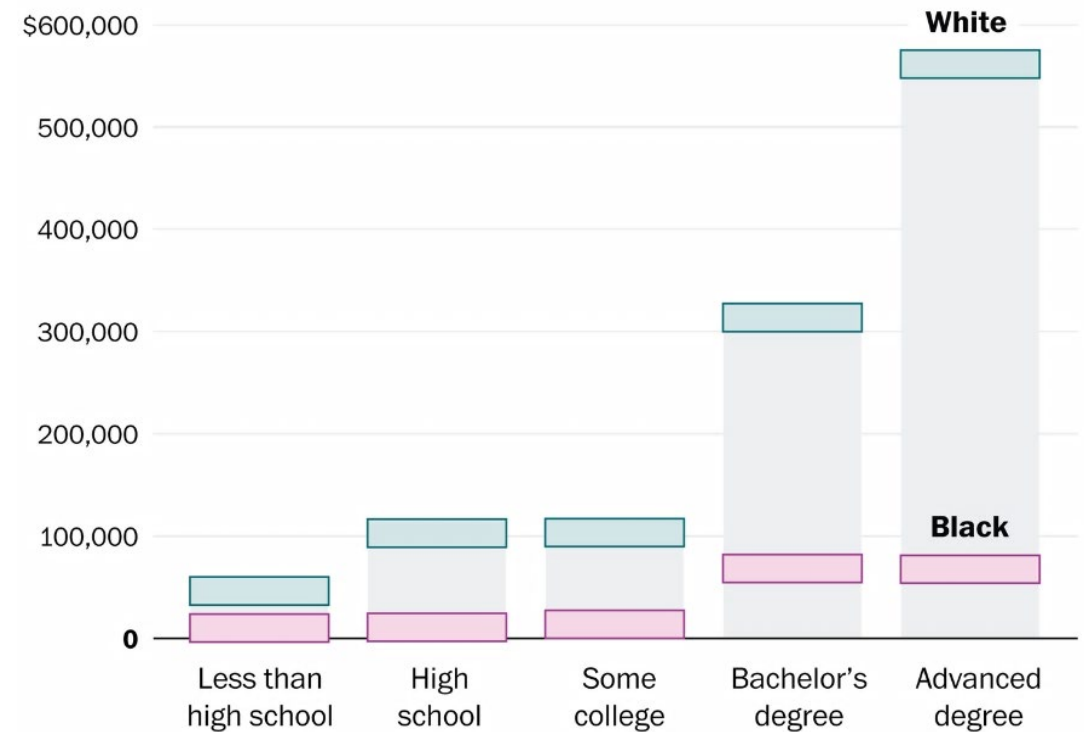
Median black household wealth as a percentage of median white household wealth



Source: Historical Survey of Consumer Finances via Minneapolis Fed and University of Bonn economists Moritz Kuhn, Moritz Schularick and Ulrike I. Steins

At every education level, black wealth lags

Median household wealth by race and education level, 2016

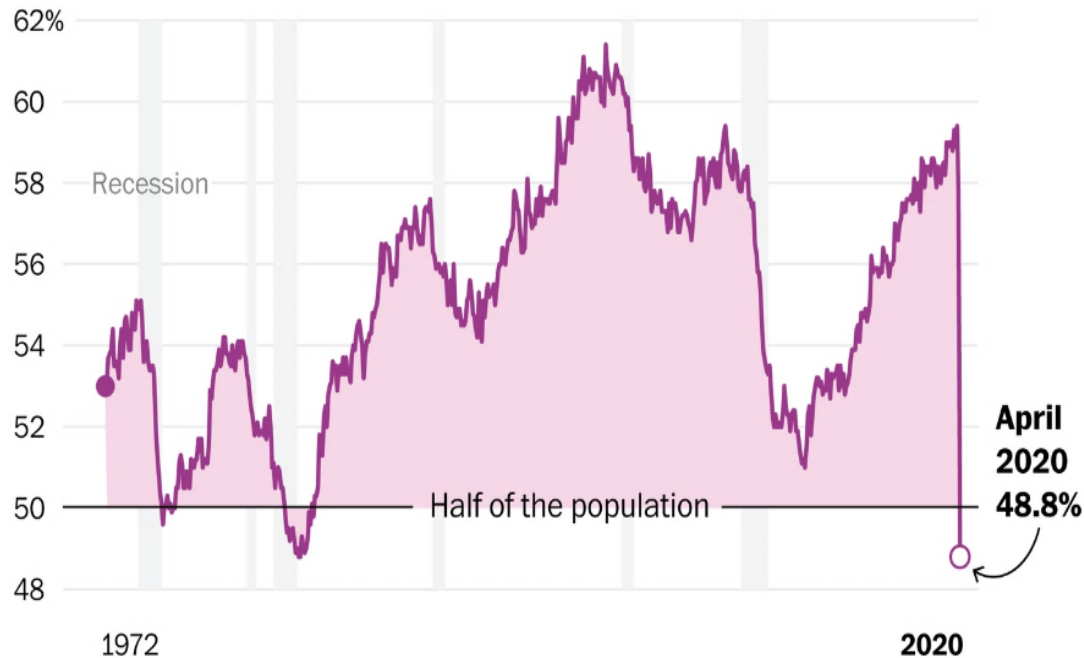


Source: Federal Reserve
THE WASHINGTON POST

The Washington Post – June 4, 2020

Fewer than half of black adults are now employed

U.S. black employment as a share of the black adult population



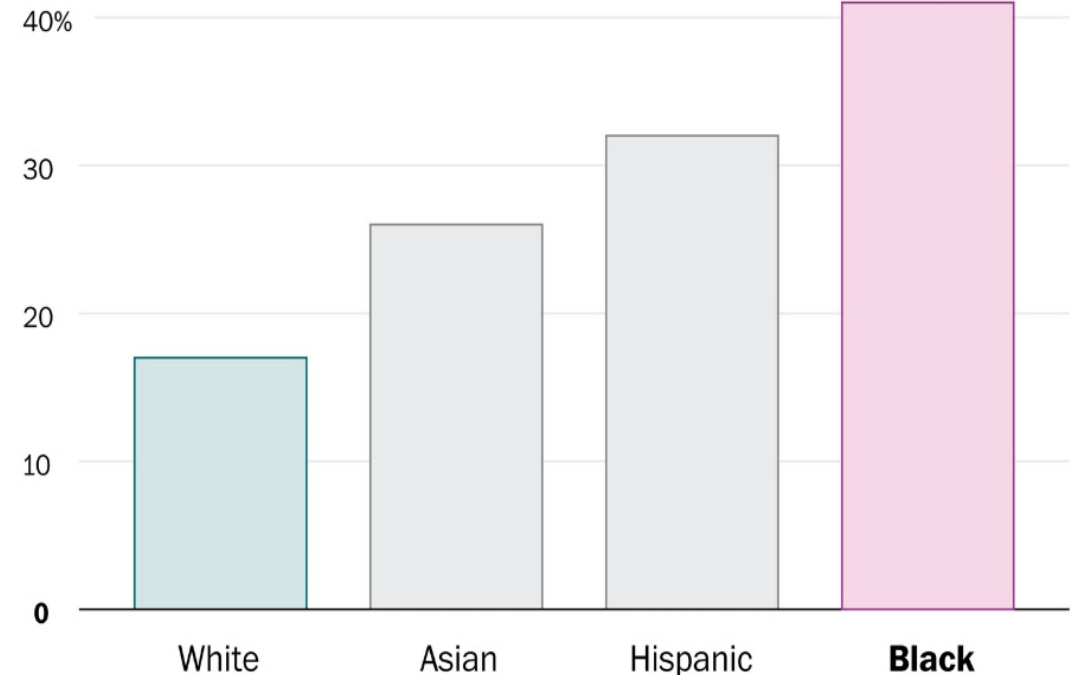
Note: Seasonally adjusted

Source: Labor Department via FRED

THE WASHINGTON POST

Black small businesses hit twice as hard as white ones

U.S. small business owners and self-employed workers who weren't working in April 2020, shown as a share of February's total



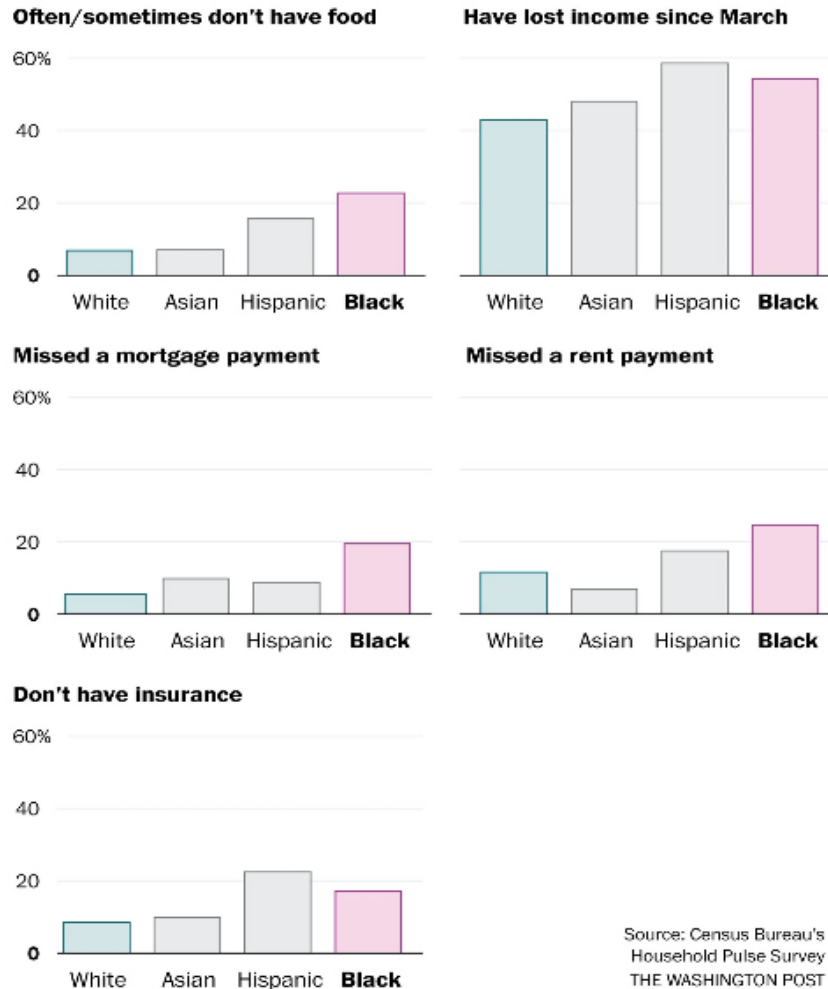
Source: Labor Department data analyzed by Robert Fairlie of the University of California, Santa Cruz

THE WASHINGTON POST

The Washington Post – June 4, 2020

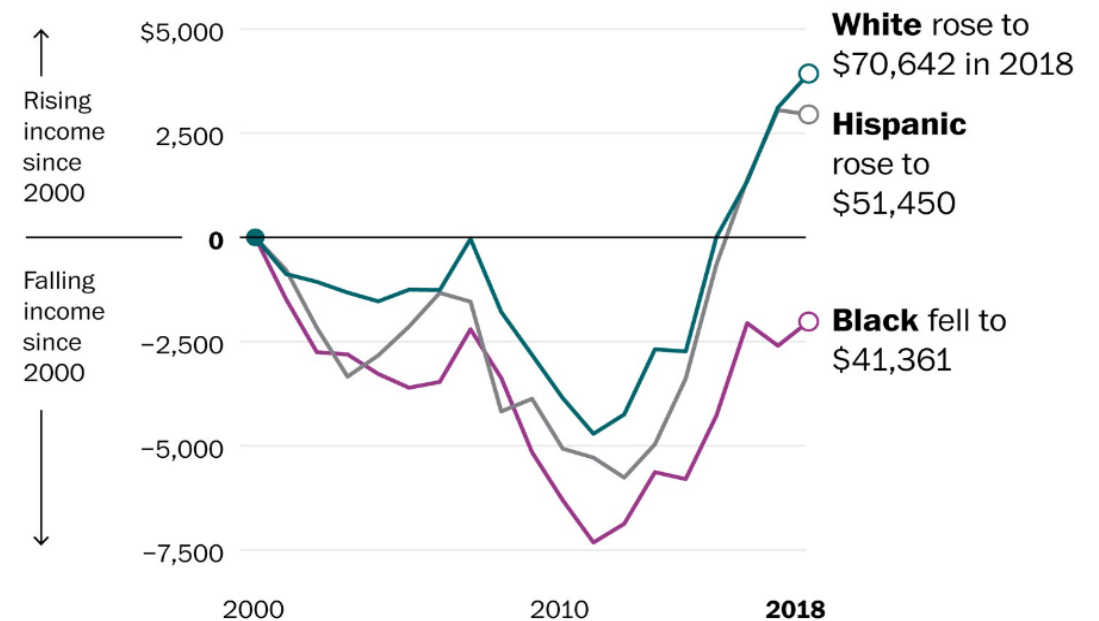
Consequences of the pandemic, by race or ethnicity

Average for three weeks from April 23 to May 21, 2020



Black Americans still earn less than they did in 2000

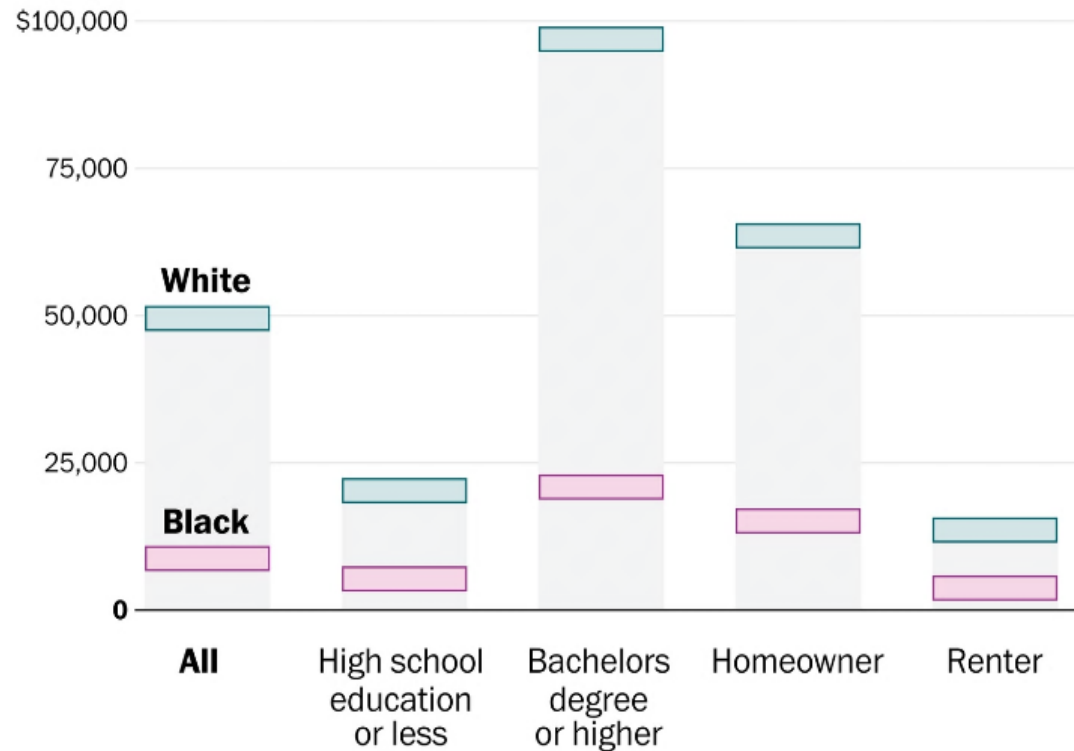
Change in median income since the year 2000, adjusted for inflation



Note: Shown in constant 2018 dollars; methodology changed in 2013 and multiple values have been averaged within each year when available; the white category doesn't include those of Hispanic origin.
Source: Census Bureau
THE WASHINGTON POST

The Washington Post – June 4, 2020

Average cash on hand, 2016

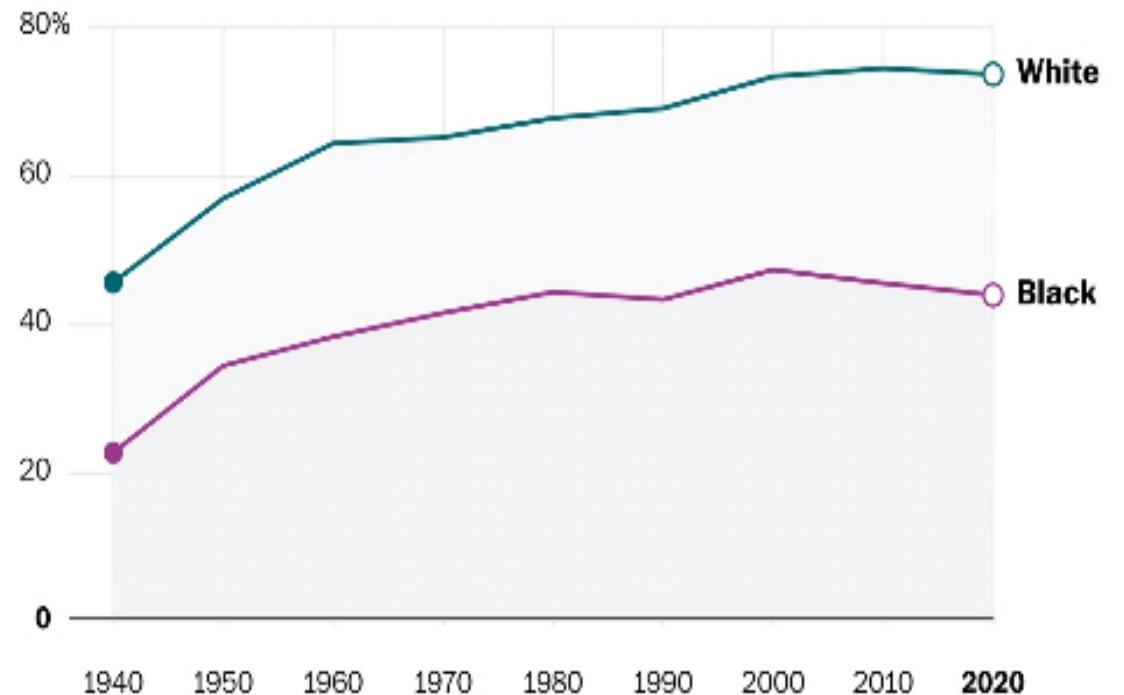


Note: Includes checking and savings accounts, cash, prepaid cards and directly held stocks, bonds and mutual funds.

Source: Federal Reserve via Elise Gould and Valerie Wilson of the Economic Policy Institute
THE WASHINGTON POST

Black homeownership is in retreat

Homeownership rates by decade and race

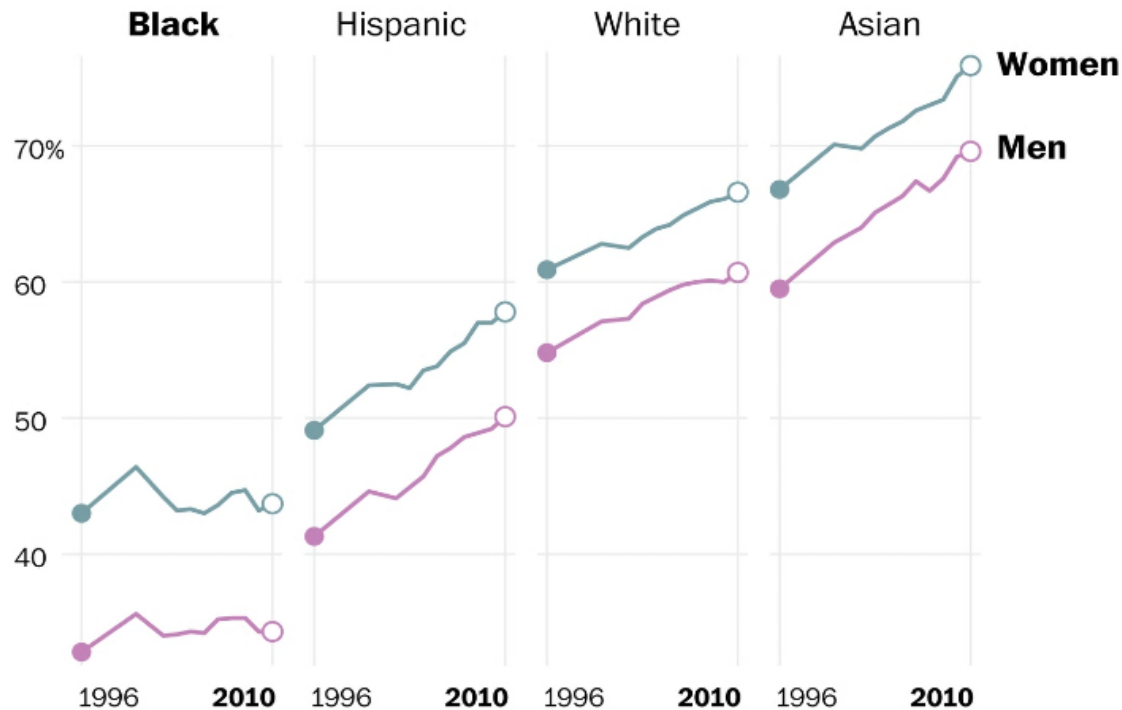


Source: Census Bureau
THE WASHINGTON POST

The Washington Post – June 4, 2020

Colleges are failing most black students

Share of students who graduate from four-year universities within six years, by year they entered college



Note: Asian includes Pacific Islanders

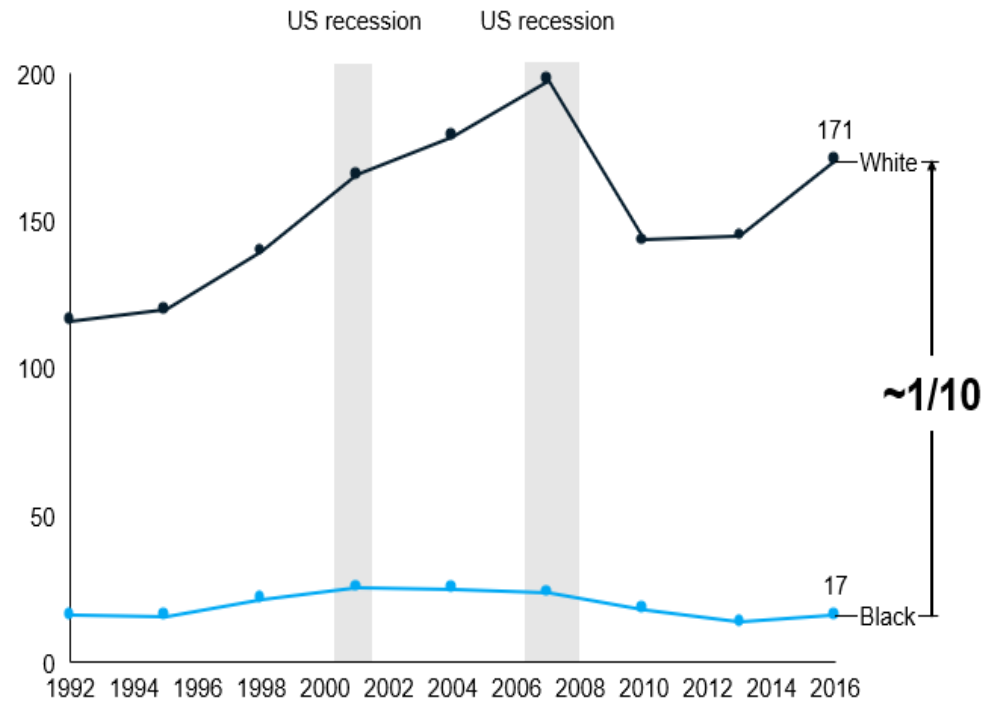
Source: National Center for Education Statistics

THE WASHINGTON POST

McKinsey

A wide and persistent wealth gap between white and black families creates two negative impacts

Median family wealth in 1992-2016 by ethnicity/race. \$ thousand¹



1. 2016 dollars

Source: "2016 survey of consumer finances." Federal reserve Board, September 2017, federalreserve.gov

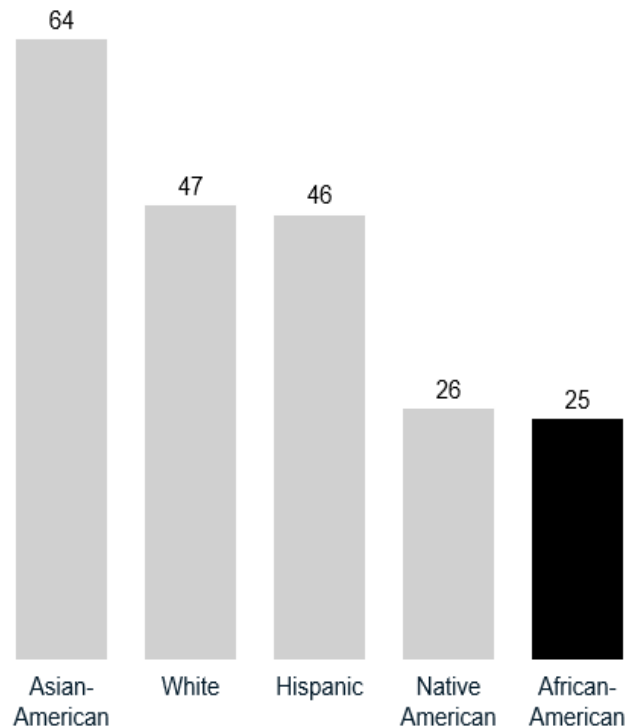
- 1 Human Impact**
 Racial wealth gap puts **downward pressure** on socioeconomic mobility, disadvantaging black individuals, families, and communities
- 2 Economic Impact**
 Racial wealth gap also **constrains the US economy as a whole**

McKinsey & Company 2

McKinsey

1. Human impact: Economic mobility is not equally distributed...

% of poor children that will reach the middle class or better as adults



Source: Equality of Opportunity Project, "Race and Economic Opportunity in the United States," 2018

...and is particularly difficult for black Americans



...African-American boys have lower rates of upward mobility than white boys from families in the **same census tract** and with **similar incomes**



...African-American children born in the top income quintile will remain there as adults compared to white children¹

1. 18% for black American vs. 41% for white children

Source: Race and Economic Opportunity in the United States: An Intergenerational Perspective

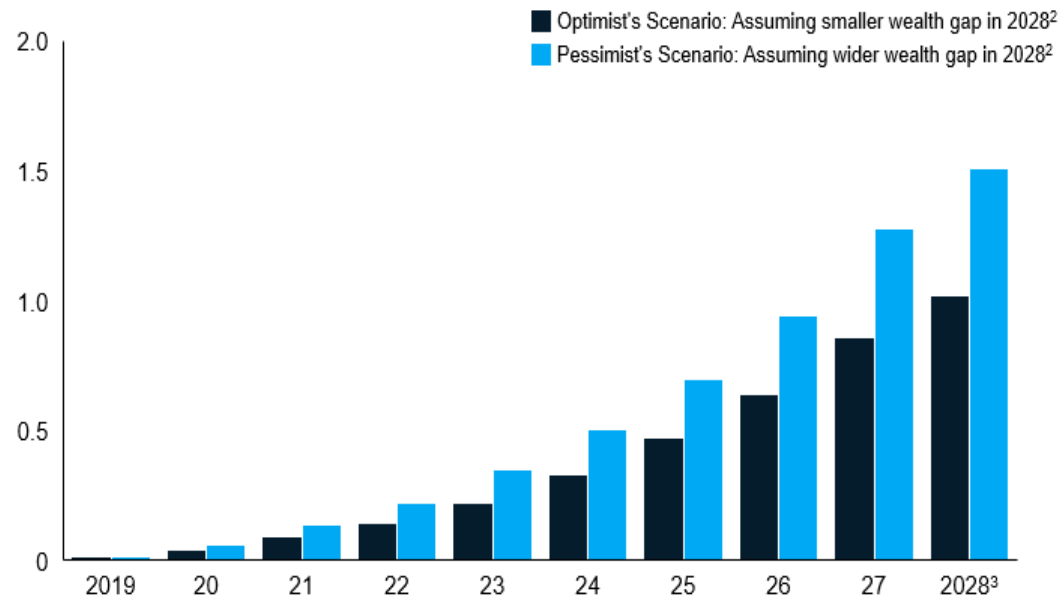
McKinsey & Company 3

McKinsey

2. Economic impact: The racial wealth gap constrains the US economy as a whole, leading to up to \$1.5 trillion in lost economic output

Real GDP increase from closing racial wealth gap, \$ trillion¹

By closing the racial wealth gap, US GDP could be **4 to 6 percent higher by 2028**



11-12K

Increase in per capita GDP⁴ between 2018-2028, greater than any expansion in the last 30 years

¹ 2018 dollars ² Assumes that over time, wealth gap will close in linear fashion, reaching scenario's assumed targets by 2028
³ \$2,631 billion - \$3,990 billion in nominal dollars ⁴ \$7,500 - \$11,400 in nominal dollars

Source: "2016 survey of consumer finances," Federal reserve Board, September 2017, Federalreserve.gov; Oxford Economics; McKinsey Global Institute analysis

McKinsey & Company 4

McKinsey

The challenges facing black Americans have increased in the pandemic, with continued police brutality threatening black lives and livelihoods

COVID-19 has exacerbated the challenges facing black Americans...

65%

of Black Americans live in states with below median COVID-19 testing rates

40%

of the revenues of black-owned businesses are located in the five most vulnerable sectors due to the pandemic, compared with 25% of the revenues of all US businesses

7 M

of jobs held by black workers (39% of all jobs held by black workers) are vulnerable as a result of the COVID-19 crisis compared with **34%** for white workers

52%

of black workers surveyed say the coronavirus outbreak is a major threat to their personal financial situation, compared to 43% of white respondents

... as has continued police brutality



2.5x

lifetime risk that black men & boys will be killed by police vs. white men & boys

Source: McKinsey Global Institute, Pew Research Center

5



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NYPA GUIDELINES FOR PROCUREMENT CONTRACTS

1. PURPOSE

These Guidelines for Procurement Contracts (“Guidelines”) set forth the policy of the Authority regarding the solicitation and awarding of Procurement Contracts. The provisions of Article 4-C of the Economic Development Law, §§ 2879 and 2879-a of the Public Authorities Law, Articles 15-A and 17-B of the Executive Law and §§ 139-j and 139-k of the State Finance Law were considered in developing these Guidelines. Departments and facilities may adopt further procedures to implement these Guidelines.

2. DEFINITIONS

- A. “Capital projects” generally refer to the acquisition or construction of new assets, the replacement and/or betterment of existing assets, equipment, or property (including those of NYPA’s customers, where authorized). Betterment refers to an extension of the useful life or improvement in the efficiency and/or capacity of the asset, equipment, or property.
- B. “Contact” is any oral, written, or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the Authority’s conduct or decision regarding the procurement.
- C. “Discretionary Purchase” is a procurement made below statutorily established monetary threshold amounts (e.g., not exceeding \$500,000 for the purchase of commodities and/or services from Small Business Enterprises or NYS-certified MWBE firms, and without a dollar cap for SDVOB firms as further set forth in Sections 3.D and 3.K.5-7) and at the discretion of the Authority, without the need for a formal competitive bid process. For the purpose of determining whether a purchase is within the discretionary thresholds, the aggregate amount of all purchases of the same commodities and/or services to be made within the 12-month period commencing on the date of purchase shall be considered. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities and/or services from the same provider within the 12-month period commencing on the date of the first purchase to an amount greater than \$500,000, pursuant to State Finance Law § 163.
- D. “Disadvantaged Business Enterprise” (DBE) is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, pursuant to the definition found in 49 C.F.R Part 26.

- E. "Evaluation of Proposals," as further outlined in Section 4 below, includes evaluating factors the Authority's consideration of a bidder's skill, judgment, and business integrity.
- F. "Goods" include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as Equipment," where 60% or more of the total projected contract value will be for the purchase of equipment, material or supplies.
- G. "Minority- and Women-owned Business Enterprise" ("MWBE") is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in the Authority's Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A, and pursuant to the definition found in Executive Law § 310.
- H. "Non-Procurement Contracts" include contracts under \$5,000, contracts for energy with or without environmental attributes included, capacity, renewable energy certificates, ancillary services, transmission, distribution or related services in support of providing service to Authority customers; contracts for differences; financial hedge contracts (including but not limited to swaps, calls, puts or swap options) or credit rating services; certain insurance and healthcare products that do not readily lend themselves to a competitive solicitation. In addition, Non-Procurement Contracts include direct and indirect placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Authority participates.
- I. "Operation and Maintenance" ("O&M") generally refers to the work or services necessary to keep the plants, transmission lines, and other equipment and facilities to include NYPA customers, where authorized, (collectively referred to generally as an "asset") in optimal operating condition and/or to restore an asset to its productive capacity. This includes the cost of inspecting, testing, analyzing and reporting on the condition of the asset required to determine repairs or replacement, as well as costs associated with the normal operation and administration of NYPA's production/transmission facilities and energy programs.
- J. "Procurement Contracts" are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Authority's White Plains office, facilities, operations and maintenance ("O&M") and capital projects (as defined in Section 2.1. and 2.A., respectively), including but not limited to goods such as office supplies, major electrical

equipment, construction and maintenance work and services as more fully described in Section 2.F and 2.M.

K. “Purchase Order Release” is a single order issued for goods or services in accordance with the terms and conditions of a Value Contract.

~~K.L.~~ “Relative” is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines. The term Relative may include, but is not limited to, the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.

~~L.M.~~ “Services Contracts” are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships, or firms who are not and do not employ officers or employees of the Authority) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services, and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by a consultant for the Authority), and construction management. Non-Personal services include but are not limited to skilled or unskilled temporary personnel, including clerical office staff, technicians, or engineers working under Authority’s supervision, maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Authority staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of the aforementioned factors.

~~M.N.~~ “Single-Source” is a procurement in which the Authority, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offeror over another that can supply the goods or services.

~~N.O.~~ “Small Business” (or Small Business Enterprise, “SBE”), pursuant to Executive Law § 310 and as used in these Guidelines, unless otherwise indicated, is a business that has a significant business presence (as defined at 5 NYCRR 140.1) in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.

Q.P. “Software” includes on-premise applications as well as Software-as-a-Service (SaaS) which is defined as a software distribution model in which a third-party provider hosts application and makes access available to customers over the Internet. “Software” shall be considered “Equipment” where such term is used throughout these Guidelines.

P.Q. “Sole Source” is a procurement in which only one offeror is capable of supplying the required goods or services.

Q.R. “Service-Disabled Veteran-Owned Business” (“SDVOB”) is a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is at least 51% owned by one or more service-disabled veterans; in which such ownership is real, substantial and continuing, and also has and exercises the authority to control independently the day-to-day business decisions of the enterprise; is a Small Business and is certified by the New York State Office of General Services, as further set forth in Article 17-B of the Executive Law.

S. “Value Contract” Master Service Agreement for goods and services with specific target value and term.

3. **SOLICITATION REQUIREMENTS**

- A. Preparation of the solicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Strategic Supply Management (“SSM”) Department, or the facilities’ SSM Departments, and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals (“RFP”) or Request for Quotations (“RFQ”) will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$50,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$50,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation advertised in the same manner as an RFP/RFQ (referred to as a Request for Qualifications and/or Request for Information (“RFI”). In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder’s skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. The Authority may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Authority does so at its own cost or expense and will not be reimbursed by the Authority for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Authority representative.
- D. In order to promote the use of Minority- and Women-owned Business Enterprises (“MWBEs”), Service-Disabled Veteran-Owned Businesses (“SDVOBs”) and Small Business Enterprises (“SBEs”), the Authority will solicit offers from such firms known to have

experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definitions of NYS-certified MWBE or SDVOB firms and SBEs are set forth in Sections 2.~~H~~G, 2.~~L~~R and 2.~~I~~O, respectively.

To foster increased use of MWBEs and SBEs, a single proposal may be sought, negotiated and accepted for discretionary purchases of goods and/or services not exceeding \$500,000, in the aggregate including all amendments, from a NYS-certified MWBE or an SBE that offers a reasonable price for such goods and/or services. An SDVOB may be awarded on the basis of a single proposal that offers a reasonable price for such goods and/or services without a dollar cap. The award of such proposal requires the written approval of the Vice President, SSM. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the Vice President, SSM. Furthermore, the award of such Procurement Contracts will be noticed on the *Contract Reporter* website, as further set forth in Section 3.H.

E. It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Authority will endeavor to promote such participation and to comply with the applicable statutory provisions. In furtherance of Public Authorities Law § 2879, the following definitions and actions apply:

1. “New York State Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Authority that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Authority that are substantially performed within New York State as further described in Public Authorities Law § 2879.
2. “New York State resident” is a person who maintains a fixed, permanent, and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Authority that are substantially produced outside New York State, or services other than construction services, sought by the Authority that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business

Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.

5. Pursuant to Public Authorities Law § 2879, the Authority shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by the Authority’s President and CEO if the CEO determines in writing that it is in the best interests of the Authority to do so, as further set forth in the above-referenced law.
 6. Pursuant to Public Authorities Law § 2879, the Authority will, where feasible, make use of the stock item specification forms of New York State manufacturers, producers and/or assemblers, as made available by the Commissioner of General Services, for any Procurement Contract for the purchase of goods.
- F. Certain goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State (e.g., the New York State Office of General Services (“OGS”)) or Federal government (e.g., General Services Administration (“GSA”)) or any city or municipality where the White Plains SSM Department, or facility SSM Departments, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Authority and have approved the specifications and proposed terms and conditions of such contract.
- Certain Procurement Contracts established by the OGS or GSA require that authorized users conduct a “mini bid” (i.e., an abbreviated supplemental competitive bid procurement process) among prequalified bidders identified in such established contracts. Certain other Procurement Contracts issued by the Authority (e.g., for on-call consulting or contracting services) may also utilize a mini bid process, typically, in cases of a multiple award, where a contract is awarded to more than one bidder that meets the Authority’s bid requirements, in order to satisfy multiple factors and needs as set forth in the bid document. Such mini bids shall be conducted by the Authority’s SSM staff (or on behalf of the Authority by an Implementation Contractor) where applicable and practicable. Within a said multiple award group, work may be assigned to a specific firm without conducting a mini bid, under certain circumstances, including but not limited to: where such firm possesses specialized expertise and is uniquely qualified to perform such work; where time constraints, emergency or other critical conditions exist or geographic location is of primary consideration in order to meet schedule requirements, respond to emergent issues or otherwise meet the Authority’s needs; or when the work scope is below a specified monetary threshold. The decision to assign work without conducting a mini bid shall typically be made jointly by SSM and the initiating departments and shall be documented for the Procurement Record.
- G. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; evaluation criteria (as defined in Section 4.B); milestone dates;

the Authority's Supplier Diversity Program and SDVOB requirements, if applicable; all other applicable Authority requirements and any special methods or limitations that the Authority chooses to govern the work. Telephone solicitation, usually for procurements valued at less than \$50,000, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification. All solicitations made by telephone shall be documented and made part of the Procurement Record.

- H. For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), the Authority will, prior to soliciting proposals, submit all required information to the Commissioner of the DED to be included on the New York State *Contract Reporter* website, (www.nyscr.ny.gov) (unless such posting would serve no useful purpose). Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the *Contract Reporter* website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, the Authority will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on the *Contract Reporter* website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.M, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Certain Procurement Contracts may require purchases: (1) on a spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. Such purchases are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the Vice President, SSM, and/or the head of the initiating department that does not complete its procurements through the SSM Department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Authority.

Notwithstanding the foregoing, submittal of a notice / announcement of award for inclusion on the *Contract Reporter* website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such discretionary contracts not exceeding \$500,000 awarded to Small Business Enterprises or NYS-certified MWBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured, for discretionary awards on a single or sole source basis to SDVOB's, or for the purchase of food, including milk and milk products that are grown, produced or harvested in New York State, and certain other Procurement Contracts exempt from the general advertising requirement for Procurement Contract bidding

opportunities, in accordance with the afore-referenced law. Such notice shall specify the name of the awardee.

- I. In order to further increase participation of service-disabled veterans in New York State's contracting opportunities, the Service-Disabled Veteran-Owned Business ("SDVOB") Act was signed into law on May 12, 2014. The SDVOB program provides for eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business. The Division of Service-Disabled Veterans' Business Development within the New York State Office of General Services ("OGS") is responsible for certifying eligible SDVOBs, assisting agencies and authorities in complying with the law, and promoting SDVOB participation in the state's procurement activities. Under this program, contracts may be awarded on a non-competitive basis to NYS-certified SDVOBs for discretionary purchases. Alternately, contracts may be competitively bid exclusively among NYS-certified SDVOBs regardless of value, and advertised as such on the *Contract Reporter* website.

- J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as an Authority representative, a "competitive search" will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The White Plains SSM Department or the appropriate facility SSM Department will work with the initiating department to gather information from potential sources, that will include a description of the consultant/firm's qualifications, résumés of key personnel, past experience and proposed billing rates.

- K. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:

1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.

5. The contract is awarded to a Small Business Enterprise or to a NYS-certified MWBE firm for discretionary purchases not exceeding \$500,000, pursuant to Section 3.D and as further set forth in Section 2.C
 6. The contract is awarded to a NYS-certified SDVOB for a discretionary purchase.
 7. The contract is for the discretionary purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 8. The contract is for the discretionary purchase of commodities that are food, including milk and milk products, which are grown, produced or harvested in New York State, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 9. Services are required on a more expedited basis than the competitive procurement process will allow. Requesting business units must demonstrate the urgency of the project and that awardee is cost-effective and qualified in the subject area. Services shall be for specific scopes of work in an amount not exceeding \$500,000 and are subject to the approvals stated in Section 3.D.
 - 9-10. Purchases made on a Sole Source, Single Source, or other non-competitive basis are subject to Public Authorities Law § 2879-a, 2 NYCRR Part 206, entitled “Comptroller Approval of Contracts Made by State Authorities” (“Comptroller Regulations”) and the State Authority Contract Manual.
- L. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain contracts to the New York State Comptroller for approval that are awarded on a Sole Source, Single Source, or other non-competitive basis for the purchase of goods and/or services in an amount in excess of \$1 million, and shall notify the successful bidder therefor. Such contracts or contract amendments shall not be valid and enforceable unless approved by the Comptroller or until 90 days have elapsed from such submission without action by the Comptroller, as further set forth in the referenced law and regulations.
- M. Subject to the Authority’s Expenditure Authorization Procedures (“EAPs”), and Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:

1. A threat to the health or safety of the public or Authority employees or workers.
 2. Proper functioning of the Authority facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- N. Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the department head or other authorized equivalent per the EAPs will provide a written statement explaining the compelling reasons therefor to the White Plains SSM Department or the appropriate facility SSM Department. The award of such Procurement Contracts, regardless of value, requires the written approval of the Vice President, SSM, except as noted in Section 3.H.
- O. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the President and CEO or the COO prior to processing by the SSM Department.
- P. In furtherance of Public Authorities Law § 2800, when a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition shall apply: "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the Vice President, SSM or authorized designee.
- Q. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Authority will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the State Finance Law §§ 139-j and 139-k, the following shall apply:

The "Restricted Period" is the period of time commencing with the earliest posting, on the Authority's website, in a newspaper of general circulation, or in the Procurement Opportunities Newsletter (i.e., New York State *Contract Reporter*) in accordance with Article 4-C of the Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerors (i.e., bidders/con- tractors) intending to result in a Procurement Contract with the Authority and ending with the final contract award and approval by the Authority and, where applicable, the State Comptroller. The "Restricted Period" also applies to a "mini-bid" process that may be utilized in certain established OGS, GSA or Authority multiple award contracts, as provided in Section 3.F.

The Authority shall designate a person or persons who may be contacted, with respect to each Authority procurement. The bidders/contractors or persons acting on their behalf, shall only contact the Authority's designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.

- R. In furtherance of the Authority's commitment to ensure transparency and accountability of its operations, every member, officer or employee of the Authority who is contacted by a lobbyist is required to make a contemporaneous record of such contact, pursuant to Public Authorities Law § 2987 and as further set forth in the Authority's Company Policy, Lobbying Contacts CP 9-2, regarding this matter.

- S. Project Sunlight (Chapter 399, Part A, Section 4 of the Laws of 2011) requires the Authority to record in a database maintained by the New York State Office of General Services certain appearances between the Authority and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal "Restricted Period." Covered individuals at the Authority means an employee who has the power to exercise discretion in procurement matters or advises someone who exercises such discretion. A covered individual outside of the Authority means both "external" (e.g., a lobbyist) and "internal" (e.g., sales representative) representatives of an entity, individuals appearing on behalf of themselves, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to the Authority's Ethics and Compliance Office for recording in the Project Sunlight database.

- T. Prior to entering into any binding relationship with a third party (e.g., written agreement or memorandum of understanding (MOU)) in pursuit of any joint or collaborative development project, the office of SSM and the Law Department ("Law") must be notified regarding the procurement and on the issue of whether and to what extent the projects falls within the constraints of the Authority's procurement regulations and enabling legislation. SSM and Law should be brought into any such project in the development process.

Provided that the Authority has statutory authority to develop or otherwise participate in a project developed, in whole or in part, in collaboration with a third party, the following minimum criteria must be met:

- (i) the Authority's participation must be in response to a solicitation issued by the State or other public entity pursuant to a competitive selection process; and

- (ii) the construction of any asset to be owned by the Authority must comply with all applicable laws, including but not limited to prevailing wage requirements and goals established for the use of minority enterprises (e.g., minority- and women-owned business enterprise (MWBE), service disabled veteran owned business (SDVOB)); and
- (iii) goods and/or services required to develop and implement the project must be sourced and procured in accordance with, and subject to, either (a) the Authority's Procurement Guidelines; or (b) the requirements of the third party collaborator governing the competitive procurement of goods and services, provided that SSM has been furnished with a copy of such requirements which demonstrate, in SSM's judgement, that a competitive procurement or equivalent has been or will be undertaken.

Prior to execution any underlying agreement (i.e. joint development agreement, MOU, etc.) an internal award recommendation shall be memorialized and approved by the VP SSM and the responsible Business Unit head.

4. **EVALUATION OF PROPOSALS**

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder (including, but not limited to, the bidder's skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the White Plains SSM Department and/or the appropriate facility SSM Department and appropriate managers as stipulated in the EAPs. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the low bidder(s), as determined by the Vice President, SSM or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in

New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Authority's work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder's skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.

Another factor to be considered in evaluating proposals may involve an assessment of the bidder's diversity practices, where applicable. Pursuant to Article 15-A of the Executive Law, diversity practices are the contractor's practices and policies with respect to utilizing NYS-certified MWBEs in contracts as subcontractors and suppliers, and entering into partnerships, joint ventures or other similar arrangements with NYS-certified MWBEs. A contractor's diversity practices may be assessed when: (1) a procurement is awarded on the basis of "Best Value" as described in Section 4.D. (but *not* when a procurement is awarded based upon "lowest price"); (2) the anticipated award is \$250,000 or greater; and (3) such assessment is practicable, feasible and appropriate. Such assessment shall not permit the automatic rejection of a bid or Procurement Contract proposal based on lack of adherence to diversity practices.

- C. For Services Contracts (as defined in Section 2.M of these Guidelines), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts for Goods (as defined in Section 2.F of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents. (See also Section 4.F regarding award to "other than low bidder".)

As a best practice and pursuant to State Finance Law § 163, the Authority may award on a "Best Value" basis for awarding contracts to the offeror that optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis and may also identify a quantitative factor for offerors that are Small Businesses or NYS-certified SDVOB or MWBE firms.

- E. Pursuant to § 139-k of the State Finance Law, the Authority shall not award a Procurement Contract (as defined in Subsection 3.Q.1 of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Authority's policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor pursuant to State Finance Law §§ 139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law § 139-k in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management as stipulated in the EAPs, and should be based on such a proposal providing a clear advantage to the Authority over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited to: improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; the bidders' financial resources or the ability to meet or exceed Supplier Diversity Program and SDVOB goals; and overall, the bidder's skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Authority may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, the Authority deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings.

5. **RECOMMENDATION OF AWARD**

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
 - 1. Lump sum and/or unit prices for equipment and construction work.
 - 2. Hourly or daily rates for personnel.
 - 3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
 - 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
 - 5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.
- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but

not limited to payment terms, warranties and bond requirements, if any, as well as Supplier Diversity Program requirements, as applicable.

6. **AWARD OF CONTRACT**

- A. Services Contracts (which include contracts for Construction, Personal and Non-personal services, as defined in Section 2.M.) valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months are approved and reviewed annually by the Trustees. Services Contracts for a period of less than 12 months are approved by authorized designees in accordance with existing EAPs. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Trustees at the request of the initiating department and will be reviewed by the Trustees annually. Extending a contract for services, that has previously been approved by the Trustees, for a cumulative term of more than 12 months requires further Trustees' approval.
- B. Extending a contract, previously approved by the Trustees, for 12 months or less ("grace period") requires approval by the Vice President of the requesting department or other authorized equivalent or designee in accordance with existing EAPs and concurrence by the Vice President, SSM.
- C. For Services Contracts valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months that must be awarded prior to the next quarterly Trustees' meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total term and value, such contract must be approved in writing by the appropriate management as set forth in the EAPs. Such contract is subject to the Trustees' approval, at the next quarterly Trustees' meeting. If such approval is not granted, the contract will be terminated immediately.
- D. A contract or contract task valued or estimated to be \$5,000 or greater is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Trustee-approved contracts for architect/engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved in accordance with the EAPs.
- E. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions. However, at the sole discretion of the Vice President of SSM may approve a Business Unit's written justification for a contract term exceeding 5 years or reasonable extension of such a contract.
- F. For construction value contracts purchase order releases maybe issued up to the term limit of the value contract. The term of a construction purchase order release shall be as

required to complete the work assigned. The term of the value contract shall be extended accordingly.

- E.G. Multiyear contracts for Goods (which include equipment, materials and supplies, as defined in Section 2.F) valued or estimated to be \$5,000 or greater are subject to the management approval thresholds established in the EAPs, and require Trustee approval only once those thresholds are met.
- F.H. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAPs, the Business Unit Head, with the prior concurrence of the Vice President, SSM or equivalent(s) or designee, may authorize extending such contract, subject to the Trustees ratifying such action as soon as practicable.
- G.I. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAPs, interim approval by the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Trustees ratifying such action as soon as practicable.
- H.J. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAPs, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the Vice President, SSM or equivalent(s) or designee, may authorize in writing the commencement of such services. The initial compensation limitation may not exceed the authorization level for the President and Chief Executive Officer or equivalent(s) or Chief Operating Officer or equivalent(s) as set forth in the EAPs. Such contracts will be subject to the Trustees' approval, which will be solicited at their next scheduled Trustee meeting.
- I.K. The White Plains SSM Department or the facilities' SSM Departments prepare the contract for execution by the Authority and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Authority signatories of such letters must be authorized to approve contract awards pursuant to the EAPs.
- J.L. Pursuant to Economic Development Law § 143, the Authority shall submit an announcement of the intended contract for inclusion in the procurement opportunities newsletter at the time it enters into a contract. Such announcement shall identify the contract, specify the date of the award of the contract and provide the name of and contact information for each recipient of the contract.
- K.M. Pursuant to Public Authorities Law § 2879, the Authority shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase

of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneously with notifying the successful bidder therefor. The Authority shall not enter into the Procurement Contract for said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

7. CONTRACT PROVISIONS

- A. The following standard forms of contracts are available from the White Plains SSM Department: purchase order format (for standard procurements of goods and/or services); furnish-and-deliver format (for major equipment purchases); long form agreements (for consulting services) and maintenance agreement formats; contract work orders (for construction work of small magnitude); construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services.

Authority departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the SSM Department, which, along with the facilities' SSM Departments, is solely responsible for requesting proposals.

- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.
1. Schedule of Services or Specifications
 2. Time of Completion
 3. Compensation or Itemized Proposals
 4. Relationship of Parties
 5. Delays
 6. Termination
 7. Changes in the Work
 8. Claims and Disputes
 9. Warranty
 10. Insurance

11. Records, Accounts, Inspection and Audit
12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. MWBE requirements
19. SDVOB requirements
20. Entire Agreement

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix "A" (Miscellaneous Statutory Provisions)
4. Appendix "B" (Prompt Payment Provisions)
5. Appendix "C" (Minority- and Women-owned Business Enterprise (MWBE) Participation Goal Requirement)
6. Appendix "D" (Background Security Screening for Authority Contractors)
7. Appendix "E" (Omnibus Procurement Act of 1992 Requirements)
8. Appendix "F" (Computer Aided Design Requirements For New York Power Authority Drawings)
9. Appendix "G" (Equal Employment Opportunities Requirements)
10. Appendix "H" (Tax Law Requirements)
11. Appendix "I" (New York Power Authority (NYPA) North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) Cyber Access And/or Unescorted Physical Access Training Requirements)
12. Appendix "J" (Bidder/Contractor Compliance with State Finance Law §§ 139-j and 139-k Providing for Certain Procurement Disclosures)
13. Appendix "K" (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub. L. No. 111-5 Stat. 2009) ("ARRA") Funded Projects) - inactive
14. Appendix "L" (DOE Federal Contract Provisions) - inactive
15. Appendix "M" (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology ("BART") for Heavy Duty Vehicles)
16. Appendix "N" (The New York State Iran Divestment Act of 2012 – Iranian Energy Sector Divestment)
17. Appendix "O" (Encouraging Use of New York State Businesses in Contract Performance) – inactive
18. Appendix "P" (Non Bulk Electric System (BES)) (Information Security Requirements for Vendors and External Partners non Bulk Electric System)
19. Appendix "P" for BES (Information Security Requirements for Vendors and External Partners for Bulk Electric System)

- C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services.

Furthermore, any firm, person or other entity retained by the Authority to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work.

The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a procurement proposal;
3. There is no qualified response to the solicitation for future phases of work, including implementation; or
4. The originating Authority Business Unit determines in writing that the restrictions are not in the best interests of the Authority. Such originating Business Unit shall obtain the approval of the applicable Business Unit Head or equivalent(s), Vice President, SSM or equivalent(s) or designee, Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

8. **CHANGE ORDERS**

- A. Change Orders to existing contracts are justified in the following cases:
1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
 2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
 3. To accommodate emergency conditions, defined in Section 3.M herein, that require the immediate performance of work by a firm already under contract;
 4. When rebidding would not be practical or in the best interests of the Authority's customers; and
 5. To meet the Authority's Supplier Diversity and SDVOB Program goals in accordance with Executive Law Articles 15-A and 17-B, respectively.
- B. All Change Orders must be approved in accordance with the Authority's EAPs, and should include specific schedules for completion of work at the earliest possible time.
- C. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value

of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement.

9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES

- A. Former Authority officers and employees may be eligible to be considered for direct engagement as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their engagement is not barred by New York Public Officers Law § 73(8); they obtain an opinion by the New York State Joint Commission on Public Ethics that such engagement is permissible; and upon approval of the President and Chief Executive Officer, as well as the Chairman of the Board of Trustees.
- B. Pursuant to the provisions of New York Public Officers Law § 73(8):
 - 1. No Authority officer or employee is eligible, within a period of two years after the termination of Authority service to appear or practice before the Authority or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Authority.
 - 2. No Authority officer or employee is eligible, at any time after the termination of Authority service, to appear, practice, communicate or otherwise render services before the Authority or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.
 - 3. Pursuant to the provisions of New York Public Officers Law § 73(8-b), notwithstanding the provisions of 1. and 2. above, a former Authority officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to the Authority, if, prior to engaging in such service, the Chairman of the Board of Trustees certifies in writing to the New York State Joint Commission on Public Ethics that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the Authority's needs and is otherwise unavailable at a comparable cost. Where approval of the contract is required under § 112 of the New York State Finance Law, the Comptroller shall review and consider the reasons for such certification. The New York State Joint Commission on Public Ethics must review and approve all such certifications.
- C. No Authority employee who is involved in the award of Authority grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected

official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

- D. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- E. No Authority employee may take part in any contracting process or decision: (i) to a Relative; or (ii) to any entity in which the Authority employee or a Relative of such Authority employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise in writing his or her supervisor and the Office of Ethics and Compliance of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

For purposes of this Section 9.E, the term "Relative" is defined in Definitions, Section 2.
L of these Guidelines.

10. **SUPPLIER DIVERSITY PROGRAM REQUIREMENTS**

The Authority strives to continue to foster the development of business opportunities on Authority contracts for MWBEs. Article 15-A of the Executive Law established the NYS Office (now Division) of Minority and Women's Business Development ("DMWBD") that is responsible for developing rules and regulations for implementation of this statute, certifying MWBEs and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an MWBE is included in Section 2.-G of these Guidelines. The Authority aims to solicit proposals from NYS-certified MWBEs that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to subcontract a portion of the work to NYS-certified MWBEs as required by law. Bidders' proposals will include a completed preliminary Utilization Plan Form for MWBEs, as well as applicable EEO and Diversity Practices Forms, where required. Such bidders' failure to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award. Final MWBE Utilization Plans for Construction contracts valued at more than \$100,000 shall be provided and posted on the Authority's procurement website by the successful vendor within ten business days of contract signing.

Pursuant to § 2879 of the Public Authorities Law and as further set forth in the Authority's Supplier Diversity Program documents, the following guidelines apply:

1. Identify those areas or types of contracts for which MWBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.
2. Provide notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve MWBEs providing the types of services procured by the Authority.
3. Maintain lists of qualified NYS-certified MWBEs, including professional firms that have expressed an interest in doing business with the Authority and ensuring that such lists are updated regularly. The Authority shall also consult the lists of NYS-certified MWBEs maintained by the DED pursuant to Executive Law Article 15-A.
4. Establish appropriate goals for participation by MWBEs in Procurement Contracts awarded by the Authority and for the utilization of MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Authority. Statewide numerical participation target goals shall be established by the Authority based on the criteria set forth in Public Authorities Law § 2879.
5. Conduct procurements in a manner that will enable the Authority to achieve the maximum feasible portion of the goals established pursuant to Subdivision 4 of this Section and that eliminates barriers to participation by MWBEs in the Authority's procurements.
6. Designate one or more senior staff of the Authority to oversee the Authority's programs established to promote and assist participation by and utilization of NYS-certified MWBEs.

11. SERVICE-DISABLED VETERAN-OWNED BUSINESS ("SDVOB") PROGRAM REQUIREMENTS

The Authority also strives to foster the development of business opportunities for NYS-certified SDVOBs and to further increase participation by SDVOBs in Authority contracts, as set forth in Sections 2.~~R~~ and 3.I of these Guidelines and pursuant to Article 17-B of the Executive Law. One tool is the use of SDVOB discretionary purchasing, as further described in Sections 3.D, 3.I~~1~~, and 3.K.6 of these Guidelines. Another tool authorized by the law is the use of set-asides, which permit the reservation in whole or in part of certain procurements by state agencies and authorities when more than one NYS-certified SDVOB is available and can provide the necessary goods or services to meet the Authority's form, function and utility. The same dollar limits apply to SDVOB contracts as those set forth for MWBEs in Article 10 of these Guidelines.

Pursuant to Article 17-B of the Executive Law, the following guidelines apply:

- ~~1.~~ Identify contracts where SDVOBs may best perform and/or where SDVOB goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOB participation on Authority contracts.
- ~~2.1.~~ Submit regular reports with respect to SDVOB Program activity, including but not limited to, utilization reporting and contract monitoring and compliance.

- 3.2. Achieve an overall goal of six percent for SDVOB participation on Authority contracts.

12. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM REQUIREMENTS ON PROJECTS THAT ARE FEDERALLY FUNDED

The Authority strives to foster the development of business opportunities for NYS certified DBEs and to further increase their participation in NYPA Federally funded contracts. The Authority aims to solicit proposals from DBEs for procurements that will be partially or fully federally funded. The Authority follows the DBE guidelines as set out by The Federal Department of Transportation (“DOT”). NYS DOT is tasked with certifying eligible small businesses as DBEs in New York State.

The Authority is committed to promoting participation of DBEs in NYPA contracting opportunities in accordance with federal law and regulations and seeks to achieve the following objectives:

1. To ensure nondiscrimination in the award and administration of Federally funded contracts;
2. To create a level playing field on which DBEs can compete fairly for Federally funded contracts;
3. To ensure that the Authority’s DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this Federal eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in Federally funded contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

13. PROCUREMENT RECORD AND REPORTING

A. Procurement Record

The White Plains SSM Department maintains records of Procurement Contracts. In addition to bid- and contract award-related documents for the goods provided and/or services performed, the Procurement Record includes, but is not limited to, documentation of the decisions made and the approach taken in the procurement process. Such records are transmitted to the Digital Warehouse for electronic storage and retrieval. At the facilities, such records are currently maintained and stored by the facilities’ SSM Departments.

A.B. Procurement Report

After the end of each calendar year, the Vice President, SSM or equivalent(s) will prepare and submit an annual report to the Trustees for their approval that will include:

1. A copy of the Guidelines;
2. An explanation of the Guidelines and any amendments thereto since the last annual report;
3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
4. A list of fees, commissions or other charges paid;
5. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified MWBE designation of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
6. The type of contract (equipment, services, personal services or construction);
7. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source or competitive search);
8. The reasons why any procurements with a value equal to or greater than \$50,000 were not noticed in the Contract Reporter;
9. The number of bids received and
10. All referrals made and all penalties imposed, if any, pursuant to § 316 of the Executive Law.

B.C. Such annual report, as approved by the Trustees, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, and copies thereof shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual procurement report is posted on the Authority's website and copies shall be made available to the public upon reasonable written request therefor.

C.D. State Finance Law §§ 139-j and 139-k

1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§ 139-j and 139-k only) and the Authority's decision not to award a bidder/contractor the Procurement Contract must be included in the Procurement Record.
2. The Authority shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§ 139-j and 139-k only) or debarred due to violations of § 139-j of the State Finance Law.

3. All forms entitled "Record of Contact" shall be included in the respective Procurement Record.
4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the Procurement Record.

~~D.E.~~ The Authority may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as the Authorities Budget Office through the Public Authorities Reporting Information System ("PARIS").

F. The Vice President, SSM or equivalent(s) will also prepare Annual Goal Plans for the MWBE and SDVOB programs and will submit them by January 15 of each year to Empire State Development - Division of Minority and Women Business Development and the New York State Office of General Services - Division of Service-Disabled Veterans' Business Development, respectively. Quarterly Utilization / Activity Reports for each program will also be prepared and submitted to the aforementioned respective state entities by the 15th day of July, October, January and April.

14. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS

- A. These Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

CANAL CORPORATION GUIDELINES FOR PROCUREMENT CONTRACTS

1. PURPOSE

These Guidelines for Procurement Contracts (“Guidelines”) set forth the policy of Canal Corporation regarding the solicitation and awarding of Procurement Contracts. The provisions of Article 4-C of the Economic Development Law, §§ 2879 and 2879-a of the Public Authorities Law, Articles 15-A and 17-B of the Executive Law and §§ 139-j and 139-k of the State Finance Law were considered in developing these Guidelines. Departments and facilities may adopt further procedures to implement these Guidelines.

2. DEFINITIONS

- A. “Capital projects” generally refer to the acquisition or construction of new assets, the replacement and/or betterment of existing assets, equipment, or property (including those of NYPA’s customers, where authorized). Betterment refers to an extension of the useful life or improvement in the efficiency and/or capacity of the asset, equipment, or property.
- B. “Contact” is any oral, written, or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the Authority’s conduct or decision regarding the procurement.
- C. “Discretionary Purchase” is a procurement made below statutorily established monetary threshold amounts (e.g., not exceeding \$500,000 for the purchase of commodities and/or services from Small Business Enterprises or NYS-certified MWBE firms, and without a dollar cap for SDVOB firms as further set forth in Sections 3.D and 3.K.5-7) and at the discretion of the Authority, without the need for a formal competitive bid process. For the purpose of determining whether a purchase is within the discretionary thresholds, the aggregate amount of all purchases of the same commodities and/or services to be made within the 12-month period commencing on the date of purchase shall be considered. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities and/or services from the same provider within the 12-month period commencing on the date of the first purchase to an amount greater than \$500,000, pursuant to State Finance Law § 163.
- D. “Disadvantaged Business Enterprise” (DBE) is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, pursuant to the definition found in 49 C.F.R Part 26.
- E. “Evaluation of Proposals,” as further outlined in Section 4 below, includes evaluating factors the Authority’s consideration of a bidder’s skill, judgment, and business integrity.
- F. “Goods” include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as Equipment,” where 60% or more of the total projected contract value will be for the purchase of equipment, material or supplies.

- G. "Minority- and Women-owned Business Enterprise" ("MWBE") is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in the Authority's Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A, and pursuant to the definition found in Executive Law § 310.
- H. "Non-Procurement Contracts" include contracts under \$5,000, contracts for energy with or without environmental attributes included, capacity, renewable energy certificates, ancillary services, transmission, distribution or related services in support of providing service to Authority customers; contracts for differences; financial hedge contracts (including but not limited to swaps, calls, puts or swap options) or credit rating services; certain insurance and healthcare products that do not readily lend themselves to a competitive solicitation. In addition, Non-Procurement Contracts include direct and indirect placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Authority participates.
- I. "Operation and Maintenance" ("O&M") generally refers to the work or services necessary to keep the plants, transmission lines, and other equipment and facilities to include NYPA customers, where authorized, (collectively referred to generally as an "asset") in optimal operating condition and/or to restore an asset to its productive capacity. This includes the cost of inspecting, testing, analyzing and reporting on the condition of the asset required to determine repairs or replacement, as well as costs associated with the normal operation and administration of NYPA's production/transmission facilities and energy programs.
- J. "Procurement Contracts" are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Authority's White Plains office, facilities, operations and maintenance ("O&M") and capital projects (as defined in Section 2.I. and 2. A., respectively), including but not limited to goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2.F and 2.M.
- K. "Purchase Order Release" is a single order issued for goods or services in accordance with the terms and conditions of a Value Contract.
- ~~K.L.~~ "Relative" is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines. The term Relative may include, but is not limited to, the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.

L.M. “Services Contracts” are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships, or firms who are not and do not employ officers or employees of the Authority) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services, and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by a consultant for the Authority), and construction management. Non-Personal services include but are not limited to skilled or unskilled temporary personnel, including clerical office staff, technicians, or engineers working under Authority’s supervision, maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Authority staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of the aforementioned factors.

M.N. “Single-Source” is a procurement in which the Authority, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offeror over another that can supply the goods or services.

N.O. “Small Business” (or Small Business Enterprise, “SBE”), pursuant to Executive Law § 310 and as used in these Guidelines, unless otherwise indicated, is a business that has a significant business presence (as defined at 5 NYCRR 140.1) in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.

O.P. “Software” includes ~~on-premise~~on-premises applications as well as Software-as-a-Service (SaaS) which is defined as a software distribution model in which a third-party provider hosts application and makes access available to customers over the Internet. “Software” shall be considered “Equipment” where such term is used throughout these Guidelines.

P.Q. “Sole Source” is a procurement in which only one offeror is capable of supplying the required goods or services.

Q.R. “Service-Disabled Veteran-Owned Business” (“SDVOB”) is a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is at least 51% owned by one or more service-disabled veterans; in which such ownership is real, substantial and continuing, and also has and exercises the authority to control independently the day-to-day business decisions of the enterprise; is a Small Business and is certified by the New York State Office of General Services, as further set forth in Article 17-B of the Executive Law.

S. “Value Contract” Master Service Agreement for goods and services with specific target value and term.

3. SOLICITATION REQUIREMENTS

- A. Preparation of the solicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Strategic Supply Management (“SSM”) Department, or the Canal Corporation SSM Department, and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals (“RFP”) or Request for Quotations (“RFQ”) will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$50,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$50,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation advertised in the same manner as an RFP/RFQ (referred to as a Request for Qualifications and/or Request for Information (“RFI”). In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder’s skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. The Canal Corporation may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Canal Corporation does so at its own cost or expense and will not be reimbursed by the Canal Corporation for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Canal Corporation representative.
- D. In order to promote the use of Minority- and Women-owned Business Enterprises (“MWBEs”), Service-Disabled Veteran-Owned Businesses (“SDVOBs”) and Small Business Enterprises (“SBEs”), the Canal Corporation will solicit offers from such firms known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definitions of NYS-certified MWBE or SDVOB firms and SBEs are set forth in Sections 2.H, 2.L and 2.I, respectively. To foster increased use of MWBEs and SBEs, a single proposal may be sought, negotiated and accepted for discretionary purchases of goods and/or services not exceeding \$500,000, in the aggregate including all amendments, from a NYS-certified MWBE or an SBE that offers a reasonable price for such goods and/or services. An SDVOB may be awarded on the basis of a single proposal that offers a reasonable price for such goods and/or services without a dollar cap. The award of such proposal requires the written approval of the Vice President, SSM. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the Vice President, SSM. Furthermore, the award of such Procurement Contracts will be noticed on the *Contract Reporter* website, as further set forth in Section 3.H.
- E. It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Canal Corporation will endeavor to promote such

participation and to comply with the applicable statutory provisions. In furtherance of Public Authorities Law § 2879, the following definitions and actions apply:

1. “New York State Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Canal Corporation that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Canal Corporation that are substantially performed within New York State as further described in Public Authorities Law § 2879.
 2. “New York State resident” is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
 3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Canal Corporation that are substantially produced outside New York State, or services other than construction services, sought by the Canal Corporation that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
 4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.
 5. Pursuant to Public Authorities Law § 2879, the Canal Corporation shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by the NYPA’s President and CEO if the CEO determines in writing that it is in the best interests of the Canal Corporation to do so, as further set forth in the above-referenced law.
 6. Pursuant to Public Authorities Law § 2879, the Canal Corporation will, where feasible, make use of the stock item specification forms of New York State manufacturers, producers and/or assemblers, as made available by the Commissioner of General Services, for any Procurement Contract for the purchase of goods.
- F. Certain goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State (e.g., the New York State Office of General Services (“OGS”)) or Federal government (e.g.,

General Services Administration ("GSA")) or any city or municipality where the White Plains SSM Department, or Canal Corporation SSM Department, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Canal Corporation and have approved the specifications and proposed terms and conditions of such contract.

Certain Procurement Contracts established by the OGS or GSA require that authorized users conduct a "mini-bid" (i.e., an abbreviated supplemental competitive bid procurement process) among prequalified bidders identified in such established contracts. Certain other Procurement Contracts issued by the Canal Corporation (e.g., for on-call consulting or contracting services) may also utilize a mini-bid process, typically, in cases of a multiple award, where a contract is awarded to more than one bidder that meets the Canal Corporation bid requirements, in order to satisfy multiple factors and needs as set forth in the bid document. Such mini bids shall be conducted by the Canal's Corporation SSM staff (or on behalf of the Canal Corporation by an Implementation Contractor) where applicable and practicable. Within a said multiple award group, work may be assigned to a specific firm without conducting a mini-bid, under certain circumstances, including but not limited to: where such firm possesses specialized expertise and is uniquely qualified to perform such work; where time constraints, emergency or other critical conditions exist or geographic location is of primary consideration in order to meet schedule requirements, respond to emergent issues or otherwise meet the Canal's Corporation needs; or when the work scope is below a specified monetary threshold. The decision to assign work without conducting a mini bid shall typically be made jointly by the Canal Corporation SSM Department and initiating departments and shall be documented for the Procurement Record.

- G. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; evaluation criteria (as defined in Section 4.B.); milestone dates; the Canal Corporation Supplier Diversity Program and SDVOB requirements, if applicable; all other applicable Canal Corporation requirements and any special methods or limitations that the Canal Corporation chooses to govern the work. Telephone solicitation, usually for procurements valued at less than \$50,000, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification. All solicitations made by telephone shall be documented and made part of the Procurement Record.
- H. For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), the Canal Corporation will, prior to soliciting proposals, submit all required information to the Commissioner of the DED to be included on the New York State *Contract Reporter* website, (www.nyscr.ny.gov) (unless such posting would serve no useful purpose). Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the *Contract Reporter* website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, the Canal Corporation will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on

the *Contract Reporter* website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.M, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Certain Procurement Contracts may require purchases: (1) on a spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. Such purchases are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the NYPA Vice President of Strategic Supply Management (SSM), and/or the head of the initiating department that does not complete its procurements through NYPA SSM or the Canal Corporation SSM Department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Canal Corporation.

Notwithstanding the foregoing, submittal of a notice / announcement of award for inclusion on the *Contract Reporter* website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such discretionary contracts not exceeding \$500,000 awarded to Small Business Enterprises (SBEs) or MWBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured, for discretionary awards on a single or sole source basis to SDVOB's, or for the purchase of food, including milk and milk products that are grown, produced or harvested in New York State, and certain other Procurement Contracts exempt from the general advertising requirement for Procurement Contract bidding opportunities, in accordance with the afore-referenced law. Such notice shall specify the name of the awardee.

- I. In order to further increase participation of service-disabled veterans in New York State's contracting opportunities, the Service-Disabled Veteran-Owned Business ("SDVOB") Act was signed into law on May 12, 2014. The SDVOB program provides for eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business. The Division of Service-Disabled Veterans' Business Development within the New York State Office of General Services ("OGS") is responsible for certifying eligible SDVOBs, assisting agencies and authorities in complying with the law, and promoting SDVOB participation in the state's procurement activities. Under this program, contracts may be awarded on a non-competitive basis to NYS-certified SDVOBs for discretionary purchases. Alternately, contracts may be competitively bid exclusively among NYS-certified SDVOBs regardless of ~~value, and~~ value and advertised as such on the *Contract Reporter* website.
- J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as a Canal Corporation representative, a “competitive search” will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The NYPA SSM Department or the Canal Corporation SSM Department staff will work with the initiating department to gather information from potential sources, that will include a description of the consultant/firm’s qualifications, résumés of key personnel, past experience and proposed billing rates.

- K. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:
1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
 2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
 3. A sole supplier’s item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
 4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
 5. The contract is awarded to a Small Business Enterprise or to a NYS-certified MWBE firm for discretionary purchases not exceeding \$500,000, pursuant to Section 3.D and as further set forth in Section 2.C.
 6. The contract is awarded to a NYS-certified SDVOB for a discretionary purchase
 7. The contract is for the discretionary purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 8. The contract is for the discretionary purchase of commodities that are food, including milk and milk products, which are grown, produced or harvested in New York State, in an amount not exceeding \$500,000, as further set forth in Section 2.C and subject to the approvals stated in Section 3.D.
 9. Services are required on a more expedited basis than the competitive procurement process will allow. Requesting business units must demonstrate the urgency of the project and that awardee is cost-effective and qualified in the subject area. Services shall be for specific scopes of work in an amount not exceeding \$500,000 and are subject to the approvals stated in Section 3.D.
 - 8-10. Purchases made on a Sole Source, Single Source, or other non-competitive basis are subject to Public Authorities Law § 2879-a, 2 NYCRR Part 206, entitled “Comptroller Approval of Contracts Made by State Authorities” (“Comptroller Regulations”) and the State Authority Contract Manual.
- L. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Canal Corporation may be required to submit certain contracts to the New York State Comptroller for approval that are awarded on a Sole

Source, Single Source, or other non-competitive basis for the purchase of goods and/or services in an amount in excess of \$1 million, and shall notify the successful bidder therefor. Such contracts or contract amendments shall not be valid and enforceable unless approved by the Comptroller or until 90 days have elapsed from such submission without action by the Comptroller, as further set forth in the referenced law and regulations.

- M. Subject to the Canal Corporation Expenditure Authorization Procedures (“EAPs”), and Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:
1. A threat to the health or safety of the public or Canal Corporation employees or workers.
 2. Proper functioning of the Canal Corporation facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- N. Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the department head or other authorized equivalent per the EAPs will provide a written statement explaining the compelling reasons therefor to the NYPA Vice President, SSM. The award of such Procurement Contracts, regardless of value, requires the written approval of the NYPA Vice President, SSM, except as noted in Section 3.H.
- O. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the NYPA President and CEO or the COO prior to processing by the NYPA SSM Department or Canal Corporation SSM Department.
- P. In furtherance of Public Authorities Law § 2800, when a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the NYPA Chief Executive Officer and Chief Financial Officer stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition shall apply: “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the NYPA Vice President, SSM or authorized designee.
- Q. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Canal Corporation will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the State Finance Law §§ 139-j and 139-k, the following shall apply:

The “Restricted Period” is the period of time commencing with the earliest posting, on the Canal Corporation website, in a newspaper of general circulation, or in the Procurement Opportunities Newsletter (i.e., New York State *Contract Reporter*) in accordance with Article 4-C of the Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerors (i.e., bidders/contractors) intending to result in a Procurement Contract with the Canal Corporation and ending with the final contract award and approval by the Canal Corporation and, where applicable, the State Comptroller. The “Restricted Period” also applies to a “mini-bid” process that may be utilized in certain established OGS, GSA or Canal Corporation multiple award contracts, as provided in Section 3.F.

The Canal Corporation shall designate a person or persons who may be contacted, with respect to each Canal Corporation procurement. The bidders/contractors or persons acting on their behalf, shall only contact the Canal Corporation’s designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.

- R. In furtherance of the Canal Corporation commitment to ensure transparency and accountability of its operations, every member, officer or employee of the Canal Corporation who is contacted by a lobbyist is required to make a contemporaneous record of such contact, pursuant to Public Authorities Law § 2987.
- S. Project Sunlight (Chapter 399, Part A, Section 4 of the Laws of 2011) requires the Canal Corporation to record in a database maintained by the New York State Office of General Services certain appearances between the Canal Corporation and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal “Restricted Period.” Covered individuals at the Canal Corporation means an employee who has the power to exercise discretion in procurement matters or advises someone who exercises such discretion. A covered individual outside of the Canal Corporation means both “external” (e.g., a lobbyist) and “internal” (e.g., sales representative) representatives of an entity, individuals appearing on behalf of themselves, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to the Canal Corporation Ethics and Compliance Office for recording in the Project Sunlight database.
- T. Prior to entering into any binding relationship with a third party (e.g., written agreement or memorandum of understanding (MOU)) in pursuit of any joint or collaborative development project, the office of SSM and the Law Department (“Law”) must be notified regarding the procurement and on the issue of whether and to what extent the projects falls within the constraints of the Authority’s procurement

regulations and enabling legislation. SSM and Law should be brought into any such project in the development process.

Provided that the Authority has statutory authority to develop or otherwise participate in a project developed, in whole or in part, in collaboration with a third party, the following minimum criteria must be met:

- (i) the Authority's participation must be in response to a solicitation issued by the State or other public entity pursuant to a competitive selection process; and
- (ii) the construction of any asset to be owned by the Authority must comply with all applicable laws, including but not limited to prevailing wage requirements and goals established for the use of minority enterprises (e.g., minority- and women-owned business enterprise (MWBE), service disabled veteran owned business (SDVOB)); and
- (iii) goods and/or services required to develop and implement the project must be sourced and procured in accordance with, and subject to, either (a) the Authority's Procurement Guidelines; or (b) the requirements of the third party collaborator governing the competitive procurement of goods and services, provided that SSM has been furnished with a copy of such requirements which demonstrate, in SSM's judgement, that a competitive procurement or equivalent has been or will be undertaken.

Prior to execution any underlying agreement (i.e. joint development agreement, MOU, etc.) an internal award recommendation shall be memorialized and approved by the VP SSM and the responsible Business Unit head.

4. EVALUATION OF PROPOSALS

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder (including, but not limited to, the bidder's skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the Canal Corporation SSM Department and appropriate managers as stipulated in the EAPs. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the low bidder(s), as determined by the NYPA Vice President, SSM or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued,

and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Canal Corporation work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder's skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.

Another factor to be considered in evaluating proposals may involve an assessment of the bidder's diversity practices, where applicable. Pursuant to Article 15-A of the Executive Law, diversity practices are the contractor's practices and policies with respect to utilizing NYS-certified MWBEs in contracts as subcontractors and suppliers, and entering into partnerships, joint ventures or other similar arrangements with NYS-certified MWBEs. A contractor's diversity practices may be assessed when: (1) a procurement is awarded on the basis of "Best Value" as described in Section 4.D. (but *not* when a procurement is awarded based upon "lowest price"); (2) the anticipated award is \$250,000 or greater; and (3) such assessment is practicable, feasible and appropriate. Such assessment shall not permit the automatic rejection of a bid or Procurement Contract proposal based on lack of adherence to diversity practices.

- C. For Services Contracts (as defined in Section 2.M of these Guidelines), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts for Goods (as defined in Section 2.C-F of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents. (See also Section 4.F regarding award to "other than low bidder".)

As a best practice and pursuant to State Finance Law § 163, the Canal Corporation may award on a "Best Value" basis for awarding contracts to the offeror that optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis and may also identify a quantitative factor for offerors that are Small Businesses or NYS-certified SDVOB or MWBE firms.

- E. Pursuant to § 139-k of the State Finance Law, the Canal Corporation shall not award a Procurement Contract (as defined in Subsection 3.Q.1 of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Canal Corporation policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor pursuant to State Finance Law §§ 139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law § 139-k in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management as stipulated in the EAPs, and should be based on such a proposal providing a clear advantage to the Canal Corporation over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited to: improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; the bidders' financial resources or the ability to meet or exceed Supplier Diversity Program and SDVOB goals; and overall, the bidder's skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Canal Corporation may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, the Canal Corporation deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings.

5. RECOMMENDATION OF AWARD

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
1. Lump sum and/or unit prices for equipment and construction work.
 2. Hourly or daily rates for personnel.
 3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
 5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.

- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any, as well as Supplier Diversity Program requirements, as applicable.

6. AWARD OF CONTRACT

- A. Services Contracts (which include contracts for Construction, Personal and Non-personal services, as defined in Section 2.M.) valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months are approved and reviewed annually by the Canal Corporation Board of Directors. Services Contracts for a period of less than 12 months are approved by authorized designees in accordance with existing EAPs. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Canal Corporation Board of Directors at the request of the initiating department and will be reviewed by the Canal Corporation Board of Directors annually. Extending a contract for services, that has previously been approved by the Canal Corporation Board of Directors, for a cumulative term of more than 12 months requires further Canal Corporation Board of Director approval.
- B. Extending a contract, previously approved by the Canal Corporation Board of Directors, for 12 months or less ("grace period") requires approval by the NYPA Vice President, SSM of the requesting department or other authorized equivalent or designee in accordance with existing EAPs and concurrence by the NYPA Vice President, SSM.
- C. For Services Contracts valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months that must be awarded prior to the next quarterly Canal Corporation Board of Directors meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total term and value, such contract must be approved in writing by the appropriate management as set forth in the EAPs. Such contract is subject to the Canal Corporation Board of Directors' approval, at the next quarterly Canal Corporation Board of Directors' meeting. If such approval is not granted, the contract will be terminated immediately.
- D. A contract or contract task valued or estimated to be \$5,000 or greater is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Canal Corporation Board of Directors-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved in accordance with the EAPs.
- E. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions. However, at the sole discretion of the Vice President of SSM may approve a Business Unit's written justification for a contract term exceeding 5 years or reasonable extension of such a contract.

- F. For construction value contracts purchase order releases maybe issued up to the term limit of the value contract. The term of a construction purchase order release shall be as required to complete the work assigned. The term of the value contract shall be extended accordingly.
- E-G. Multiyear contracts for Goods (which include equipment, materials and supplies, as defined in Section 2-F) valued or estimated to be \$5,000 or greater are subject to the management approval thresholds established in the EAPs, and require Trustee approval only once those thresholds are exceeded.
- F-H. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAPs, the Department Head, with the prior concurrence of the NYPA Vice President, SSM or equivalent(s) or designee, may authorize extending such contract, subject to the Canal Corporation Board of Directors ratifying such action as soon as practicable.
- G-I. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAPs, interim approval by the NYPA President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Canal Corporation Board of Directors ratifying such action as soon as practicable.
- H-J. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAPs, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the NYPA Vice President, SSM or equivalent(s) or designee, may authorize in writing the commencement of such services. The initial compensation limitation may not exceed the authorization level for the NYPA President and Chief Executive Officer or equivalent(s) or Chief Operating Officer or equivalent(s) as set forth in the EAPs. Such contracts will be subject to the Canal Corporation Board of Directors approval, which will be solicited at their next scheduled Canal Corporation Board of Directors meeting.
- I-K. The NYPA SSM or the Canal Corporation SSM Department prepares the contract for execution by the Canal Corporation and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Canal Corporation signatories of such letters must be authorized to approve contract awards pursuant to the EAPs.
- J-L. Pursuant to Economic Development Law § 143, the Authority shall submit an announcement of the intended contract for inclusion in the procurement opportunities newsletter at the time it enters into a contract. Such announcement shall identify the contract, specify the date of the award of the contract and provide the name of and contact information for each recipient of the contract.

~~K-M.~~ Pursuant to Public Authorities Law § 2879, the Canal Corporation shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneously with notifying the successful bidder therefor. The Canal Corporation shall not enter into the Procurement Contract for said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

7. CONTRACT PROVISIONS

- A. The following standard forms of contracts are available from the NYPA SSM Department or Canal Corporation SSM Department: purchase order format (for standard procurements of goods and/or services); furnish-and-deliver format (for major equipment purchases); long form agreements (for consulting services) and maintenance agreement formats; contract work orders (for construction work of small magnitude); construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services.

Canal Corporation departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the NYPA SSM Department and the Canal Corporation SSM Department, which are responsible for requesting proposals.

- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.

1. Schedule of Services or Specifications
2. Time of Completion
3. Compensation or Itemized Proposals
4. Relationship of Parties
5. Delays
6. Termination
7. Changes in the Work
8. Claims and Disputes
9. Warranty
10. Insurance
11. Records, Accounts, Inspection and Audit

12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. MWBE requirements
19. SDVOB requirements
20. Entire Agreement

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix "A" (Miscellaneous Statutory Provisions)
4. Appendix "B" (Prompt Payment Provisions)
5. Appendix "C" (Minority- and Women-owned Business Enterprise (MWBE) Participation Goal Requirement)
6. Appendix "D" (Background Security Screening for Authority Contractors)
7. Appendix "E" (Omnibus Procurement Act of 1992 Requirements)
8. Appendix "F" (Computer Aided Design Requirements For New York Power Authority Drawings)
9. Appendix "G" (Equal Employment Opportunities Requirements)
10. Appendix "H" (Tax Law Requirements)
11. Appendix "I" (New York Power Authority (NYPA) North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) Cyber Access And/or Unescorted Physical Access Training Requirements)
12. Appendix "J" (Bidder/Contractor Compliance with State Finance Law §§ 139-j and 139-k Providing for Certain Procurement Disclosures)
13. Appendix "K" (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub. L. No. 111-5 Stat. 2009) ("ARRA") Funded Projects) - inactive
14. Appendix "L" (DOE Federal Contract Provisions) - inactive
15. Appendix "M" (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology ("BART") for Heavy Duty Vehicles)
16. Appendix "N" (The New York State Iran Divestment Act of 2012 – Iranian Energy Sector Divestment)
17. Appendix "O" (Encouraging Use of New York State Businesses in Contract Performance) – inactive
18. Appendix "P" (Information Security Requirements for Vendors and External Partners)

- C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services.

Furthermore, any firm, person or other entity retained by the Canal Corporation to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work.

The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a procurement proposal;
3. There is no qualified response to the solicitation for future phases of work, including implementation; or
4. The originating Canal Corporation Department determines in writing that the restrictions are not in the best interests of the Canal Corporation. Such originating Department shall obtain the approval of the applicable Department Head or equivalent(s), NYPA Vice President, SSM or equivalent(s) or designee, NYPA Assistant General Counsel or equivalent(s) and NYPA President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

8. CHANGE ORDERS

- A. Change Orders to existing contracts are justified in the following cases:
 1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
 2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
 3. To accommodate emergency conditions, defined in Section 3.M herein, that require the immediate performance of work by a firm already under contract;
 4. When rebidding would not be practical or in the best interests of the Canal Corporation customers; and
 5. To meet the Canal Corporation Supplier Diversity and SDVOB Program goals in accordance with Executive Law Articles 15-A and 17-B, respectively.
- B. All Change Orders must be approved in accordance with the Canal Corporation EAPs, and should include specific schedules for completion of work at the earliest possible time.
- C. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Canal Corporation may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement.

9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES

- A. Former Canal Corporation officers and employees may be eligible to be considered for direct engagement as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their

engagement is not barred by New York Public Officers Law § 73(8); they obtain an opinion by the New York State Joint Commission on Public Ethics that such engagement is permissible; and upon approval of the NYPA President and Chief Executive Officer, as well as the Chairman of the Canal Corporation Board.

- B. Pursuant to the provisions of New York Public Officers Law § 73(8):
1. No Canal Corporation officer or employee is eligible, within a period of two years after the termination of Canal Corporation service to appear or practice before the Canal Corporation or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Canal Corporation.
 2. No Canal Corporation officer or employee is eligible, at any time after the termination of Canal Corporation service, to appear, practice, communicate or otherwise render services before the Canal Corporation or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.
 3. Pursuant to the provisions of New York Public Officers Law § 73(8-b), notwithstanding the provisions of 1. and 2. above, a former Canal Corporation officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to the Canal Corporation, if, prior to engaging in such service, the Chairman of the Board of Directors certifies in writing to the New York State Joint Commission on Public Ethics that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the Canal Corporation needs and is otherwise unavailable at a comparable cost. Where approval of the contract is required under § 112 of the New York State Finance Law, the Comptroller shall review and consider the reasons for such certification. The New York State Joint Commission on Public Ethics must review and approve all such certifications.
- C. No Canal Corporation employee who is involved in the award of Canal Corporation grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- D. No Canal Corporation employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- E. No Canal Corporation employee may take part in any contracting process or decision: (i) to a Relative; or (ii) to any entity in which the Canal Corporation employee or a Relative

of such Canal Corporation employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise in writing his or her supervisor and the Office of Ethics and Compliance of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

1. For purposes of this Section 9.E, the term “Relative” is defined in Definitions, Section 2.L of these Guidelines.

10. SUPPLIER DIVERSITY PROGRAM REQUIREMENTS

The Canal Corporation strives to continue to foster the development of business opportunities on Canal Corporation contracts for MWBEs. Article 15-A of the Executive Law established the NYS Office (now Division) of Minority and Women’s Business Development (“DMWBD”) that is responsible for developing rules and regulations for implementation of this statute, certifying MWBEs and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an MWBE is included in Section 2.G of these Guidelines. The Canal Corporation aims to solicit proposals from NYS-certified MWBEs that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to subcontract a portion of the work to NYS-certified MWBEs as required by law. Bidders’ proposals will include a completed preliminary Utilization Plan Form for MWBEs, as well as applicable EEO and Diversity Practices Forms, where required. Such bidders’ failure to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award. Final MWBE Utilization Plans for Construction contracts valued at more than \$100,000 shall be provided and posted on the procurement website by the successful vendor within ten business days of contract signing.

Pursuant to § 2879 of the Public Authorities Law and as further set forth in the Canal’s Corporation Supplier Diversity Program documents, the following guidelines apply:

1. Identify those areas or types of contracts for which MWBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.
2. Provide notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve MWBEs providing the types of services procured by the Canal Corporation.
3. Maintain lists of qualified NYS-certified MWBEs, including professional firms that have expressed an interest in doing business with the Canal Corporation and ensuring that such lists are updated regularly. The Canal Corporation shall also consult the lists of NYS-certified MWBEs maintained by the DED pursuant to Executive Law Article 15-A.
4. Establish appropriate goals for participation by MWBEs in Procurement Contracts awarded by the Canal Corporation and for the utilization of MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the

Canal Corporation. Statewide numerical participation target goals shall be established by the Canal Corporation based on the criteria set forth in Public Authorities Law § 2879.

5. Conduct procurements in a manner that will enable the Canal Corporation to achieve the maximum feasible portion of the goals established pursuant to Subdivision 4 of this Section and that eliminates barriers to participation by MWBEs in the Canal's Corporation procurements.
6. Designate one or more senior staff of the Canal Corporation to oversee the Canal's Corporation programs established to promote and assist participation by and utilization of NYS-certified MWBEs.

11. SERVICE-DISABLED VETERAN-OWNED BUSINESS ("SDVOB") PROGRAM REQUIREMENTS

The Canal Corporation also strives to foster the development of business opportunities for NYS-certified SDVOBs and to further increase participation by SDVOBs in Canal Corporation contracts, as set forth in Sections 2.-R and 3.I of these Guidelines and pursuant to Article 17-B of the Executive Law. One tool is the use of SDVOB discretionary purchasing, as further described in Sections 3.D, I and K of these Guidelines. Another tool authorized by the law is the use of set-asides, which permit the reservation in whole or in part of certain procurements by state agencies and authorities when more than one NYS-certified SDVOB is available and can provide the necessary goods or services to meet the Canal Corporation form, function and utility. The same dollar limits apply to SDVOB contracts as those set forth for MWBEs in Article 10 of these Guidelines.

Pursuant to Article 17-B of the Executive Law, the following guidelines apply:

1. Identify contracts where SDVOBs may best perform and/or where SDVOB goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOB participation on Canal Corporation contracts.
2. Submit regular reports with respect to SDVOB Program activity, including but not limited to, utilization reporting and contract monitoring and compliance.
3. Achieve an overall goal of six percent for SDVOB participation on Canal Corporation contracts.

12. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM REQUIREMENTS ON PROJECTS THAT ARE FEDERALLY FUNDED

The Canal Corporation ("Canals") strives to foster the development of business opportunities for NYS certified DBEs and to further increase their participation in Canals Federally funded contracts. The Canals aims to solicit proposals from DBEs for procurements that will be partially or fully federally funded. The Canals follows the DBE guidelines as set out by The Federal Department of Transportation ("DOT"). NYS DOT is tasked with certifying eligible small businesses as DBEs in New York State.

The Canals is committed to promoting participation of DBEs in Canals contracting opportunities in accordance with federal law and regulations and seeks to achieve the following objectives:

1. To ensure nondiscrimination in the award and administration of Federally funded contracts in the canals and waterways;
2. To create a level playing field on which DBEs can compete fairly for Federally funded contracts;
3. To ensure that the Canals' DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this Federal eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in Federally funded contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

13. PROCUREMENT RECORD AND REPORTING

A. Procurement Record

The NYPA SSM Department or the Canal Corporation SSM Department maintains records of Procurement Contracts. In addition to bid- and contract award-related documents for the goods provided and/or services performed, the Procurement Record includes, but is not limited to, documentation of the decisions made and the approach taken in the procurement process. Such records may be transmitted to a digital warehouse for electronic storage and retrieval.

B. Procurement Report

After the end of each calendar year, the NYPA Vice President, SSM or equivalent(s) will prepare and submit an annual report to the Canal Corporation Board of Directors for their approval that will include:

1. A copy of the Guidelines;
2. An explanation of the Guidelines and any amendments thereto since the last annual report;
3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
4. A list of fees, commissions or other charges paid;
5. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified MWBE designation of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
6. The type of contract (equipment, services, personal services or construction);

7. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source or competitive search);
 8. The reasons why any procurements with a value equal to or greater than \$50,000 were not noticed in the Contract Reporter;
 9. The number of bids received and
 10. All referrals made and all penalties imposed, if any, pursuant to § 316 of the Executive Law.
- C. Such annual report, as approved by the Canal Corporation Board of Directors, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, and copies thereof shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual procurement report is posted on the Canal Corporation website and copies shall be made available to the public upon reasonable written request therefor.
- D. State Finance Law §§ 139-j and 139-k
1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§ 139-j and 139-k only) and the Canal Corporation decision not to award a bidder/contractor the Procurement Contract must be included in the Procurement Record.
 2. The Canal Corporation shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§ 139-j and 139-k only) or debarred due to violations of § 139-j of the State Finance Law.
 3. All forms entitled "Record of Contact" shall be included in the respective Procurement Record.
 4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the Procurement Record.
- E. The Canal Corporation may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as Canal Corporation's Budget Office through the Public Authorities Reporting Information System ("PARIS").
- F. The NYPA Vice President, SSM or equivalent(s) will also prepare Annual Goal Plans for the MWBE and SDVOB programs and will submit them by January 15 of each year to Empire State Development - Division of Minority and Women Business Development and the New York State Office of General Services - Division of Service-Disabled Veterans' Business Development, respectively. Quarterly Utilization / Activity Reports for each program will also be prepared and submitted to the aforementioned respective state entities by the 15th day of July, October, January and April.

14. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS

- A. These Guidelines are intended for the guidance of officers and employees of the Canal Corporation only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.